Registered No. P. 97

रजिस्टर्ड नं० पी० ९७

राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश शासन द्वारा प्रकाशित

खंड X] शिमला, शनिवार, 17 मार्च, 1962/26 फाल्गुन, 1883 [संख्या 11

विषय-सूची

तारीख 17 मार्च, 1962/26 फाल्गुन, 1883 को समाप्त होने वाले सप्ताह में निम्नलिखित "असाधारण राजपत्र, हिमाचल प्रदेश" प्रकाशित हुए:—

विज्ञप्ति की संख्या	विभाग का नाम	विषय
No. 4-2/61-II, dated the 14th March, 1962.	Election Department	The Delimitation of Territorial Council Constituencies (Himachal Pradesh) Order, 1962.
No. 3-1/62-Elec., dated the 13th March, 1962.	Election Department	Fixing the place of poll for the election of member for the Council of States.
No. El. 17-5/57, dated the 14th March, 1962.	Election Department	Appointment of the Returning Officers and Assistant Returning Officers for the Territorial Council Constituencies.

भाग 1—वैधानिक नियमों को छोड़ कर हिमाचल प्रदेश के उप-राज्यपाल और जुडिशल कमिश्नरज कोर्ट द्वारा अधिसूचनाएं इत्यादि

HIMACHAL PRADESH ADMINISTRATION

FOREST DEPARTMENT

NOTIFICATIONS

Simla-4, the 2nd January, 1962

No. Ft. 45-179/53-II.—Whereas it is considered necessary that the rights of the private persons in the portions of the undemarcated protected forests of village: Palsad, Dulet, Dehan, Brotha, Badhala, Lehri and Illewal, Tehsil Sadar, District Bilaspur (Himachal Pradesh) prescribed below shall remain suspended for a period of 15 years for the purpose of regeneration of forest growth in order to check denudation and soil erosion and also to improve the growing stock under Bhakra Soil Conservation scheme and whereas the remainder of such forest is sufficient and in a locality reasonably convenient for the due exercise of the rights suspended.

2. Now, therefore, in exercise of the powers conferred

by section 30(*b*) of the Indian Forest Act (XVI of 1927), as applied to Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh is pleased to declare that the portion of the undemarcated protected forests specified in the schedule appended to this notification be closed for a period of fifteen years from the date of issue of the notification.

3. Further under clause (*c*) of section 30 of the said Act, the Lieutenant Governor is pleased to prohibit from the date of this notification the collection, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process or removal of any forest produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose o f any such forest or over such portion, except with the wr itten permission of the Divisional Forest Officer, Bilaspur (Himachal Pradesh).

SCHEDULE

Range and Tehsil	Name of forests	Area of the forests	Area closed		Boundaries of the closed area
			Khasra No.	Acres	
1	2	3	4	5	6
Naina Devi Range, Tehsil Sadar	Namain U.P.F.	1138	306, 10, 1	420	*North.*—Olinda-wala phat. *South.*—Village path Tarsuh and Palsed. *East.*—Khad Palsed-wala phat and boundary of Dem. forests C. No. 1. *West.*—Ridge Dharara Tarsuh, Gweltbal and Illewala.
-do-	Lamba Dharara U.P.F.	973	1/1, 63, 189/1, 268, 347/1, 349, 348, 64/1.	268	*North.*—V. Path-wela Galua and Chamari-wala Golua. *South.*—Khuhan-khad. *East.*—Chamari-wala Golua, and Prohi-wali chhapari. *West.*—Ridge Brotha-wali boundary of village Brotha.
-do-	Kala-Teep U.P.F.	1234	2/1/1, 254/161/1, 164, 162, 163.	476	*North.*—Boundary of godown Dehan. *South.*—Path Dehan-wela. *East.*—Nala Panjpura, Kala-teep boundary of village Lehari. *West.*—Cultivated land Munshi Ram Gujjar.
-do-	Brotha Dabhela U.P.F.	1100	233, 87/1	380	*North.*—Tiba Molunwela and Behra Nimwala. *South.*—Khad Khuhan. *East.*—Boundary of village Dulett Ridge. *West.*—Nala-Panjpura Dhathiwala galua.
-do-	(1) Jamnota-wala-phat U.P.F.	787	93, 97, 86, 90, 122/1.	300	*North.*—Chhohanwala khet and Jamnothal-wala khet. *South.*—Fulwala Khuduinwala. *East.*—Boundary of village Barotha. *West.*—Kala Teep-wala Theda and Ghogranwala.
	(2) Lal Mitte-wala-phat U.P.F.		122/2	39	*North.*—Boundary of village Palsed. *South.*—Khad Bouniwala. *East.*—Galua Chini-ghatti. *West.*—Ridge Harrye-hi-wala Tibba.
-do-	Dharar Tarsuh	90	329/302/1	47	*North.*—Boundary of village Palsed and Gewalthai. *South.*—Boundary of village Jehri. *East.*—Ridge boundary of village Palsed. *West.*—Kemal Devi wala khet.
-do-	Dharar Illewala	354	131/1, 293/1	108	*North.*—Boundary of village Tarsuh and Palsed. *South.*—Boundary of village Tarsuh and cultivation land Bhatu. *East.*—Ridge boundary of village Palsed. *West.*—Khet Fahla etc. Mourusi and Tohbawala phat.

Note.—Grass cutting may be permitted free to the right-holders on permit at the discretion of the Divisional Forest Officer, Bilaspur Forest Division, Himachal Pradesh.

Simla-4, the 3rd January, 1962

No. Ft. 1-1/56.—Whereas it is considered necessary that the rights of the private persons in the portion of the forests described below shall remain suspended for a period of 20 years for purposes of regeneration of forest growth in order to improve the growing stock and also to check denudation and erosion of soil and whereas the remainder of such forest is sufficient and in a locality reasonably convenient for the due exercise of the rights suspended.

Now, therefore, in exercise of the powers conferred upon him by section 30 of the Indian Forest Act (XVI of 1927), as applied to Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh is pleased to declare that the portion of Tarna Hill afforestation area in Kamlah Range, Suket Forest Division specified in the schedule appended to this notification be closed for a period of 20 years from the date of publication of this notification for the exercise of the following rights:—

1. Grazing of all kinds of animals throughout the year;

2. Lopping and cutting of trees and bushes throughout the year;

3. Grass cutting throughout the year, except that it may be permitted free to the right-holders on permits after the rains at the discretion of the Divisional Forest Officer, Suket Forest Division, Sundernagar; and

4. Removal and quarrying of stones, burning of lime or charcoal and breaking up or clearing for cultivation,

for building, for herding cattle, or for any other purpose of any land in this closed area throughout the year except paths for drinking water, burning the dead and path from one village to other and quarrying of *Mukol* (white wash).

SCHEDULE

District: MANDI *Tehsil:* SADAR

Illaqa	Name of Forest	Total area of forest	Area to be closed	Boundaries
Mandi	Tarna Hill afforestation area.	50 acres	18 acres	*East.*—Tarna Temple. *West.*—Sarkodhi Khad. *South.*—Sunyerdhi village. *North.*—Mandi Town.

By order,
V. P. AGARWALA,
Secretary.

INDUSTRIES DEPARTMENT

NOTIFICATIONS

Simla-4, the 1st December, 1961

No. I&S. Admn. 15-(Lab. Arbitrators Panel) 252/59.—In pursuance of the decision taken at the 17th Session of the Indian Labour Conference held at Madras on the 27th to 29th July, 1959 *vide* the Government of India Ministry of Labour and Employment letter No. LRI. 1-(159)/59, dated the 28th October, 1959, the Lieutenant Governor, Himachal Pradesh, is pleased to draw up the following panel of arbitrators in order to assist the parties (Employers/Employees) in choosing arbitrators as and when necessary in the event of industrial disputes arising in this Union Territory:—

District: CHAMBA

1. Shri Desh Raj, Advocate, Chamba.
2. Shri Sagar Chand, Vice-President, Municipal Committee, Chamba.

District: MANDI

1. Shri Dina Nath, Rtd. Government Advocate.
2. Shri Kanahya Lal Mahra, Rtd. Senior Sub-Judge, Mandi.
3. Shri Kirti Ram, Advocate, Mandi.

District: SIRMUR

1. Shri Dalip Singh, Advocate, Nahan.
2. Shri Guman Singh, Advocate, Nahan.
3. Shri B. P. Kamboj, Vice-Principal, Shri Guru Ram Rai College, Nahan.

District: MAHASU

1. Shri Prem Lal Sharma, Advocate, Pargana Chautha, Sub-Tehsil Suni.
2. Shri Thakur Dass Dogar, Advocate, Shali Bazar, Theog.
3. Shri Keshab Ram Kashayap, Pleader, Theog.
4. Col. A. N. Chopra, Rtd. Director of Health Services, Assam, at present residing in Solan.
5. Shri Sobha Ram, Rtd. M.I.C. (H.P.), R/o village Chiali (Kuthar), Tehsil Solan.
6. Shri Bhagat Chand, Pleader, Rohru.
7. Shri R. P. Chohan, B.A., LL., B., Pleader, Rohru.

T. S. NEGI,
Secretary.

Simla-4, the 1st January, 1962

No. I&S. Admn. 15-(Lab. E&D Committee)-294/59.—Continuation this Administration Notification of even number, dated the 3rd April, 1961, constituting an Evaluation and Implementation Committee at State level, the Lieutenant Governor, Himachal Pradesh, is pleased to appoint the Chief Secretary of the Himachal Pradesh Administration as the Vice-Chairman of the Committee.

By order,
T. S. NEGI,
Secretary.

Simla-4, the 22nd January, 1962

No. I&S. Admn. 15-(VG)-1/61.—In pursuance of the recommendations contained in the Government of India letter No. VG/5/9/60, dated the 30th September, 1961, the Lieutenant Governor, is pleased to constitute an Editorial Board composed as under for the purpose of editing the periodical Bulletins on Vocational Guidance and Occupational Information:—

1. Director of Employment, Himachal Pradesh. *Chairman*
2. Employment Market Information Officer, Himachal Pradesh. *Member*
3. Vocational Guidance Officer, Himachal Pradesh. *Convener*

2. The function of the Board will be to advise the Vocational Guidance Officer, Himachal Pradesh on matters calculated to promote the utility of the publication.

Simla-4, the 27th January, 1962

No. I&S. 15-(EMP)-81/60.—In pursuance of the recommendations of the Government of India, the Lieutenant Governor, Himachal Pradesh, is pleased to constitute a District Committee on Employment, at the Employment Exchange, Chamba, for the Chamba district.

1. *Object.*—The object of the District Committee on Employment is to advise the Employment Exchange on problems relating to employment, creation of employment opportunities and the working of the Employment Exchange.

2. *Functions.*—The functions of the Committee shall be as follows:—

(*a*) to review employment information and to assess employment and un-employment trends—urban and rural and suggest measures for expanding employment opportunities;

(*b*) to advise on the development of the Employment service in the district;

(*c*) to consider special programme relating to the educated un-employed;

(*d*) to assess the requirements of trained craftsmen and advise the State Council for Training in Vocational Trades.

3. *Composition.*—The Committee shall be composed as under:—

1. Deputy Commissioner, Chamba district, Chamba. *Chairman*
2. Conservator of Forests, Chamba *Member*
3. Executive Engineer, Chamba Division, Chamba. *Member*
4. Regional Manager, Himachal Government Transport, Chamba. *Member*
5. Shri Chatter Singh, M.T.C. *Member*
6. Shri Vidya Dhar, M.T.C. (Representative of workers). *Member*
7. Shri Shunku Ram, Manager, M/s Roshan Lal Kuthiala, Timber *Member*

	Merchant (Representative of employers).	
8.	President, Municipal Committee, Chamba (Representative of Local Bodies).	*Member*
9.	Secretary, D. S. S. and A. Board, Chamba.	*Member*
10.	Employment Officer, Chamba	*Ex-officio Secretary.*

4. *Terms of office of Members.*—The term of office of members of the Committee shall be 3 years.

5. *Sub-Committees.*—The Committee is empowered to set up a special committee and sub-committees as required for assisting it in the discharge of its functions.

Simla-4, the 31st January, 1962

No. I&S. 15-(ITC)-695/60.—In continuation of this Administration Notification of even number, dated the 16th February, 1961, the Lieutenant Governor, Himachal Pradesh, on the recommendations of the Government of India, Ministry of Labour and Employment is pleased to appoint the Secretary, District Sailors', Soldiers' and Airmen's Board as a member of the Local Selection Committee of the district concerned.

Simla-4, the 31st January, 1962

No. I&S. Adm. 15-(ITC)-695/60.—In continuation of this Administration Notifications, No. I&S. 15-(ITC)-237/59, dated 14th November, 1959 and I&S. 15-(ITC)/695/60, dated 1st November, 1960, the Lieutenant Governor, Himachal Pradesh on the recommendations of the Government of India, Ministry of Labour and Employment (Directorate General of Employment and Training) is pleased to appoint the Secretary of the State Sailors', Soldiers' and Airmen's Board as a member of the State Council for Training in Vocational Trades.

THAKUR SEN NEGI,
Secretary.

Simla-4, the 14th February, 1962

No. I&S. 15-(METRIC)-640/61.—In exercise of the powers conferred upon him by sub-section (3) of section 1 read with clause (*i*) of section 2 of the Rajasthan Weights and Measures (Enforcement) Act, 1958 as extended to Himachal Pradesh, the Lieutenant Governor hereby appoints the 1st day of March, 1962 as the date on which the provisions of the said Act, in so far as they relate to Standard Length Measures, shall come into force in the whole of Himachal Pradesh in respect of any transactions for trade or commerce or any dealing or contract or for any work to be done or goods to be sold or delivered or class of goods or undertakings.

Simla-4, the 20th February, 1962

No. I&S. 15-(LAB)-1013/57.—In exercise of the powers vested in him under section 18 of the Punjab Trade Employees Act, 1940 as applied to Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh, is pleased to exempt the State Bank of India, Mandi from the operation of the provision of section 4 (2) of the said Act for one day *i.e.*, the 31st December, 1961, so as to enable the Bank to complete its yearly accounts.

Simla-4, the 20th February, 1962

No. I&S. 15-(M&M)-120/57.—The "Certificate-of-Approval" already granted to Shri Ram Awtar Marwah, proprietor Commercial Limestone Corporation, H-5, Race Course, Dehra Dun, as a party who is qualified to acquire prospecting licences and mining leases in respect of all minerals in Himachal Pradesh except petroleum and natural gas under the Mineral Concession Rules, 1960, is renewed upto the 31st December, 1962.

By order,
THAKUR SEN NEGI,
Secretary.

Simla-4, the 20th February, 1962

No. I&S. 15-(Est)-27/57.—Consequent upon the appointment of Dewan Gobind Sahai, Marketing Officer (Industries) to the post of Director of Industries *vide* Notification No. Apptt. 1-774/57, dated the 1st September, 1961, the Lieutenant Governor, is pleased to allow Shri N. C. Kaushal, Superintendent, Weights and Measures to hold full charge of the post of Marketing Officer (Industries), in addition to his own duties, with effect from 28th August, 1961 (A.N.) the date on which Shri Sahai relinquished the charge of the office of Marketing Officer.

THAKUR SEN NEGI,
Secretary.

CORRIGENDUM

Simla-4, the 21st February, 1962

No. I&S. Admn. 15-(Lab. Arb. Panel)-252/59.—In the Himachal Pradesh Administration Notification No. I&S. Admn. 15-(Lab. Arb. Panel)-252/59, drawing up a Panel of Arbitrators, the following name appearing at serial No. 1 under the Mahasu district is *deleted* and the remaining serial Nos. "2—7" are "renumbered at 1 to 6":—

"Shri Prem Lal Sharma, Advocate, Pargana Chautha. Sub-Tehsil Suni".

NOTIFICATIONS

Simla-4, the 23rd February, 1962

No. 5-23/61-Ind. II.—The "Certificate-of-Approval" granted to Shri Bakshi Ram Dass Bhasin, resident of Z/57, Patel Nagar, New Delhi as a party who is qualified to acquire prospecting licence and mining leases in respect of all minerals in Himachal Pradesh except petroleum and natural gas under the rules contained in the Mineral Concession Rules, 1960, is renewed upto the 31st December, 1962.

By order,
THAKUR SEN NEGI,
Secretary.

Simla-4, the 23rd February, 1962

No. 5-18/60-Indus. II.—The "Certificate-of-Approval" granted to Shri Tilak Ram Marwah, resident of 27, Dhananwala Bazar, Dehra Dun, as a party who is qualified to acquire prospecting licence and mining leases in respect of all minerals in Himachal Pradesh, except Petroleum and Natural Gas, under the Mineral Concession Rules, 1960, is renewed upto the 31st December, 1962.

THAKUR SEN NEGI,
Secretary.

Simla-4, the 23rd February, 1962

No. 5-22/61-Ind. II.—The "Certificate-of-Approval" already granted to M/s Tara Chand and Co., Krishangarh, P.O. Kuthar *via* Subathu, Tehsil Solan, District Mahasu, Himachal Pradesh, as a party who is qualified to acquire prospecting licences and mining leases in respect of all minerals in Himachal Pradesh except petroleum and natural gas under the Mineral Concession Rules, 1960, is renewed upto the 31st December, 1962.

By order,
THAKUR SEN NEGI,
Secretary.

PLANNING AND DEVELOPMENT DEPARTMENT

NOTIFICATION

Simla-4, the 22nd February, 1962

No. D. 108-149/52.—In supersession of Himachal Pradesh Administration Gazette Notification No. D. 108-149 (Estt)/52, dated the 13th November, 1961, 34 days earned leave is hereby granted to Shri G. S. Rawat, Block Development Officer, Paonta, *w.e.f.* 11-12-1961 to 13-1-1962 with permission to prefix

9th and 10th December, and to suffix 14th January, 1962 being closed holidays.

2. It is hereby certified that Shri Rawat would have continued to officiate as Block Development Officer but for proceeding on earned leave sanctioned above.

T. S. NEGI,
Secretary.

REVENUE DEPARTMENT

NOTIFICATION

Simla-4, the 6th January, 1962

No. R. 22-75/57.—In exercise of the powers vested in him *vide* Government of India, Ministry of Home Affairs letter No. F. 7/2/57-Him, dated the 21st August, 1957 read with this Administration letter No. 21-11/60-Fin (R&E), dated the 21st January, 1961, the Lieutenant Governor, Himachal Pradesh, is pleased to order that Shri Surrindra Pal, officiating Tehsildar and officiating Extra Assistant Commissioner who has passed the Departmental Examination of Tehsildar on 22-7-1961 and whose work is satisfactory, is allowed the pay scale of Rs. 270-15-300-25-400/25-550 with effect from the 22nd July, 1961, the date on which he completed the examination.

CORRIGENDUM

Simla-4, the 9th January, 1962

No. 4-40/61-Rev. I.—Please *substitute* "Muhal Majharnu" *for* "Muhal Chhaprot" as name of village in column No. 3 at page 7 against Khasra Nos. 61 onwards published in this Department Notification of even number, dated the 13th September, 1961, issued under section 4 of the Land Acquisition Act, 1894, acquiring land for construction of Power Channel, Magazine, Penstock, Pipe Line, Haulageway and Reservoir of Stage III of Uhl River Scheme in villages Chhaprot and Majharnu of Tehsil Joginder Nagar, District Mandi.

NOTIFICATIONS

Simla-4, the 10th January, 1962

No. R. 25-603/59.—Since Shri Jai Chand Malhotra, whole-time Counsel (Government Advocate), Bilaspur, could not be allowed to proceed on 40 days earned leave in view of the heavy work with him, this Administration's Notification of even number, dated the 1st July, 1961, regarding grant of 40 days earned leave to him, with effect from the date of availing, is hereby cancelled.

Simla-4, the 10th January, 1962

No. R. 25-603/59.—The Lieutenant Governor, Himachal Pradesh, is pleased to accord sanction to the grant of 45 days earned leave to Shri Jai Chand Malhotra, whole-time Counsel (Government Advocate), Bilaspur, with effect from the date of availing.

2. It is certified that Shri Malhotra would have continued to officiate as whole-time Counsel (Government Advocate), Bilaspur, but for his proceeding on leave.

Simla-4, the 10th January, 1962

No. R. 22-63/57.—The Financial Commissioner, Himachal Pradesh, is pleased to grant 31 days earned leave to Shri Jaswant Singh, Consolidation Officer, Bilaspur with effect from 14-10-1961 to 13-11-1961.

2. Certified that Shri Jaswant Singh would have continued to officiate as Consolidation Officer but for his proceeding on leave.

Simla-4, the 12th January, 1962

No. R. 24-475/58.—In exercise of the powers conferred under sub-section (3) of section 1 of Himachal Pradesh Consolidation of Holdings Act, 1953, the Lieutenant Governor, Himachal Pradesh, is pleased to direct that the remainder of the Act shall come into force with effect from the date of publication of this Notification in the villages of Tehsil Nahan, District Sirmur specified in the Annexure "A" to this Notification.

ANNEXURE "A"

LIST OF VILLAGES, SIRMUR DISTRICT

S. No.	*Name of District*	*Name of Tehsil*	*Name of village*
1.	Sirmur	Nahan	(1) Ogli
2.	-do-	-do-	(2) Nagal Sakati
3.	-do-	-do-	(3) Mogi Nand
4.	-do-	-do-	(4) Deoni
5.	-do-	-do-	(5) Pipal Wala
6.	-do-	-do-	(6) Bir Bikram Abad
7.	-do-	-do-	(7) Mohlya Khotola
8.	-do-	-do-	(8) Salani
9.	-do-	-do-	(9) Trilok Pur
10.	-do-	-do-	(10) Kotla
11.	-do-	-do-	(11) Mirpur Gurdwara
12.	-do-	-do-	(12) Kheri
13.	-do-	-do-	(13) Rampur Jatan
14.	-do-	-do-	(14) Johron
15.	-do-	-do-	(15) Nohardla
16.	-do-	-do-	(16) Koon
17.	-do-	-do-	(17) Makar Wala
18.	-do-	-do-	(18) Malon Wala
19.	-do-	-do-	(19) Shambu Wala
20.	-do-	-do-	(20) Bheron
21.	-do-	-do-	(21) Matar
22.	-do-	-do-	(22) Nalka
23.	-do-	-do-	(23) Sambalka
24.	-do-	-do-	(24) Agdi Wala
25.	-do-	-do-	(25) Nali Wala
26.	-do-	-do-	(26) Dhakran Wala
27.	-do-	-do-	(27) Bhagat Wala
28.	-do-	-do-	(28) Dhon
29.	-do-	-do-	(29) Rama
30.	-do-	-do-	(30) Bankata
31.	-do-	-do-	(31) Uttam Wala Bara Ban.
32.	-do-	-do-	(32) Jogi Ban
33.	-do-	-do-	(33) Rukhari
34.	-do-	-do-	(34) Gada Bhudi.

CORRIGENDA

Simla-4, the 15th January, 1962

No. 6-185/60-Rev. I.—Please *substitute* "5-11 bighas" *for* "9-6 bighas" as area of Khasra No. 587 and "44-12 bighas" *for* "48-7 bighas" as Total Area published in this Department Notifications of even number, dated the 20th December, 1960, and the 22nd August, 1961, issued under section 4 and 6 and 7 of the Land Acquisition Act, 1894, respectively, acquiring land for the establishment of Goat Breeding Farm at Kothipura, in village Noa of Tehsil Sadar, District Bilaspur.

By order,
BEAS DEV,
Joint Secretary.

Simla-4, the 18th January, 1962

No. 4-40/61-Rev. I.—Please *substitute* "7-8-13 bighas" *for* "7-8-12 bighas" as area of Khasra No. 66/18 appearing at page 3 of this Administration Notification of even number, dated the 14th December, 1961, issued under section 4 of the Land Acquisition Act, 1894, acquiring land for the construction of Staff Colony of Beas-Sutlej Link Project in village Sari of Tehsil Sadar, District Mandi.

NOTIFICATIONS

Simla-4, the 18th January, 1962

No. R. 22-66/57.—The Financial Commissioner, Himachal Pradesh is pleased to accord *ex-post-facto* sanction to the grant of leave to Shri B. C. Nayar, officiating Tehsildar Chachiot as under:—

(*i*) 29 days earned leave with effect from 17-7-1961 to 14-8-1961 with permission to suffix 15th August, 1961 as closed holiday.

(*ii*) 18 days earned leave with effect from 9-11-1961 to 26-11-1961.

2. Certified that Shri B. C. Nayar would have continued to officiate as Tehsildar but for his proceeding on leave.

By order,
G. M. LAUL,
Joint Secretary.

Simla-4, the 31st January, 1962

No. R. 22-972/57.—In exercise of the powers conferred upon him under the proviso to sub-section (1) of section 15 of the Himachal Pradesh Ferries Act, 1956 (Act No. 10 of 1956), the Lieutenant Governor, Himachal Pradesh is hereby pleased to declare that the *bona fide* students of villages situated across Ghambar, Gamrola and Gasian Khads in Bilaspur district shall be exempted from payment of tolls for crossing by the public ferries already existing or declared hereafter on the above streams for their journeys to and from Schools situated in Bilaspur town on all school days throughout the year.

By order,
O. N. MISRA,
Chief Secretary.

Simla-4, the 1st February, 1962

No. 14-18/60-Rev. I.—In exercise of the powers conferred by section 78 of the Indian Registration Act (XVI) of 1908 as applied to Himachal Pradesh and all other powers enabling him in this behalf, the Lieutenant Governor, Himachal Pradesh, is pleased to make the following amendments in the table of registration fees published with notification No. R. 97-21/48, dated the 19th July, 1951, as amended by notification No. 86-122/53, dated the 22nd July, 1958.

The following shall be inserted below the 2nd proviso under Article I, as proviso 3, namely:—

"Provided further that no registration fee shall be charged in respect of loan agreements and mortgage deeds executed by the Cottage and Small Scale Industrialists in connection with the loans advanced under the Punjab State Aid to Industries Act, 1935, as applied to Himachal Pradesh".

Simla-4, the 12th February, 1962

No. 4-40/61-Rev. I.—Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that the land is required to be taken urgently by the Government at public expense for a public purpose, namely for the construction of proposed Staff Colony for Beas-Sutlej Link Project at Mandi, it is hereby declared that the land described in the specification below is required urgently for the above purpose.

2. The case being of urgent nature, it is directed under the provision of section 17 (4) of the Land Acquisition Act. 1894, that the provisions of section 5-A of the said Act shall not apply to this case.

3. This declaration is made under the provisions of section 6 read with section 17 (4) of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Mandi district, Himachal Pradesh, is hereby directed to take order for the acquisition of the said land.

4. A plan of the land may be inspected in the office of the Collector, Mandi district, Mandi, Himachal Pradesh.

5. It is also hereby directed under section 17 sub-section (1) of the Land Acquisition Act, 1894 that the Collector may on the expiration of fifteen days from the publication of the notice under section 9 sub-section (1) of the said Act, take possession of the said land.

SPECIFICATION

District: MANDI *Tehsil:* SADAR

Village	Khasra No.	Area Big.	Bis.	Biswa
1	2	3	4	5
PANDOH	387	3	12	0
	388	1	4	10
	389	0	13	16
	626/390	3	14	6
	391	1	1	19
	392	0	16	10
	629/395	1	6	19
	632/401	2	12	16
	697/635	3	0	2
	696/635	1	6	8
	Total ..	19	9	6

CORRIGENDUM

Simla-4, the 17th February, 1962

No. 6-154/60-Rev. I.—Please *substitute* "0-1" bighas *for* "0-2" bighas as area of Khasra No. 3234/1 published in this Administration Notification of even number, dated the 2nd November, 1961, issued under section 4 of the Land Acquisition Act, 1894, acquiring land for the construction of Simla-Mandi road *via* Bilaspur in village Slapper of Tehsil Sundernagar, District Mandi.

By order,
G. M. LAUL,
Joint Secretary.

NOTIFICATIONS

Simla-4, the 21st February, 1962

No. 25-603/59.—The Lieutenant Governor, Himachal Pradesh, is pleased to appoint Shri Roop Singh, as whole-time Counsel (Government Advocate), to conduct references under section 18 of the Land Acquisition Act, 1894, in the Court of the Additional District Judge, Bilaspur, on a fixed salary of Rs. 500 per month plus the usual dearness allowance admissible under the Rules, with effect from the 15th January, 1962 (forenoon) to the 28th February, 1962 (after-noon).

By order,
O. N. MISRA,
Chief Secretary.

Simla-4, the 22nd February, 1962

No. R. 22-68/57.—The Financial Commissioner, Himachal Pradesh, is pleased to grant 60 days commuted leave on Medical grounds to Shri Hira Singh, Settlement Tehsildar, with effect from 8-11-1961 to 6-1-1962.

It is certified that Shri Hira Singh would have continued to officiate as Tehsildar but for his proceeding on leave.

Simla-4, the 23rd February, 1962

No. R. 24-183/58.—This Administration Notification of even number, dated the 27th March, 1958 and the 19th April, 1958, issued under section 4 of the Land Acquisition Act, 1894, in respect of villages Balhali, Bhooti, Shamathla, Bahli, Banot, Mahori, Barohag, Bhadasa and Bakhlain and Notifications of even number, all dated the 4th November, 1958, issued under section 6 and 7 of the said Act, in respect of villages Bakhlain, Balhali, Balhali, Bahli, Mahori, Barohag and Bhadasa, including Notifications No. R. 24-44/58, dated the 27th March, 1958 and the 12th September, 1958, issued under section 4 and 6 and 7 of the Land Acquisition Act, 1894, respectively, are hereby cancelled.

By order,
G. M. LAUL,
Joint Secretary.

Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that land is likely to be required to be taken by the Himachal Pradesh Administration at the public expense for a public purpose*. It is hereby notified that the land in the locality described below is likely to be required for the said* purpose.

2. This Notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, as applied to Himachal Pradesh to all whom it may concern.

3. In exercise of the powers conferred by the aforesaid section, the Lieutenant Governor is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

4. Any person interested who has any objection to the acquisition of any land in the locality may, within thirty days of the publication of this Notification, file an objection in writing before the Collector, Sirmur district, Nahan, Himachal Pradesh.

No. 4-2/62-Rev. I. Simla-4, the 27th January, 1962

**Construction of Office-cum-Residential Accommodation for Panchayat staff at Shillai.*

SPECIFICATION

District: SIRMUR *Tehsil:* RENUKA

Village	Khasra No.	Area Big.	Bis.
1	2	3	4
SHILLAI	1868	3	9
	1875	1	1
	1873	0	9
	Total ..	4	19

No. 4-3/62-Rev. I. Simla-4, the 31st January, 1962

**Extension of Progeny-cum-Demonstration Orchard Timbi*

Village	Khasra No.	Area Big.	Bis.
1	2	3	4
ASHYARI	736/2	21	16

By order,
G. M. LAUL,
Joint Secretary.

Simla-4, the 16th December, 1961

No. 6-176/60-Rev. I.—Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that land is likely to be required to be taken by the Himachal Pradesh Administration at the public expense for a public purpose, namely for the construction of Public Works Department Rest House at Rajgarh, it is hereby notified that land in the locality described below is likely to be acquired for the above purpose.

2. This Notification is made under the provisions of section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

3. In exercise of the powers conferred by the aforesaid section, the Lieutenant Governor, Himachal Pradesh, is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

4. Any person interested, who has any objection to the acquisition of the said land in the locality may, within thirty days of the publication of this Notification, file an objection in writing before the Collector of Land Acquisition, Himachal Pradesh, Public Works Department, Sirmur district, Nahan.

SPECIFICATION

District: SIRMUR *Tehsil:* PACHHAD

Village	Khasra No.	Area Big.	Bis.
1	2	3	4
SHALANA	746/1/1	1	10
	745/1/1	0	6
	Total ..	1	16

Simla-4, the 21st December, 1961

No. 4-91/61-Rev. I.—Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that land is likely to be required to be taken by the Himachal Pradesh Administration at the public expense for a public purpose, namely for the construction of Residential Colony of various Departments under District administration at Bharmour, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.

2. This Notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, as applied to Himachal Pradesh to all whom it may concern.

3. In exercise of the powers conferred by the aforesaid section, the Lieutenant Governor is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

4. Any person interested, who has any objection to the acquisition of any land in the locality may within thirty days of the publication of this Notification, file an objection in writing before the Collector, Chamba district, Chamba, Himachal Pradesh.

SPECIFICATION

District: CHAMBA *Sub-Tehsil:* BHARMOUR

Village	Khasra No.	Area Big.	Bis.
1	2	3	4
SACHUIN	2915	0	4
	2894	0	2
	2897	0	7
	2941	0	5
	2940	0	8
	2865	0	9
	2944	0	4
	2947	0	4
	2859	0	9
	2858	1	18
	2924	0	10
	2864	0	4
	2945	0	2
	2951	0	2
	2863	0	9
	2946	0	2
	2951/1	0	5
	2867	0	7
	2949	0	3
	Total ..	6	14

Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that the land is required to be taken by the Government at public expense for a public purpose*. It is hereby declared that the land described in the specification below is required for the said* purpose.

2. This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern, and under the provisions of section 7 of the said Act, the Collector, Mahasu district, Himachal Pradesh, is hereby directed to take order for the acquisition of the said land.

3. A plan of the land may be inspected in the office of the Collector, Mahasu district, Himachal Pradesh, Kasumpti.

No. 4-9/61-Rev. I. Simla-4, the 15th December, 1961

**Construction of Education Department Buildings at Theog.*

SPECIFICATION

District: MAHASU *Tehsil:* THEOG

Village	Khasra No.	Area Big.	Bis.
1	2	3	4
TINGER TANKOTI	147/2	8	5
	148/2	4	18
	Total ..	13	3

No. 4-56/61-Rev. I. Simla-4, the 15th December, 1961

*Construction of Patwar Khana Building at Chargaon

SPECIFICATION

District: MAHASU *Tehsil:* ROHRU

Village	Khasra No.	Area Big.	Area Bis.
1	2	3	4
CHARGAON	169	0	15

By order,
BEAS DEV,
Joint Secretary.

No. 6-99/60-Rev. I. Simla-4, the 12th February, 1962

*Construction of Medical Department Staff Quarters attached to Civil Hospital, Kotgarh.

SPECIFICATION

District: MAHASU *Sub-Tehsil:* KUMARSAIN

Village	Khasra No.	Area Big.	Area Bis.
1	2	3	4
KOTGARH	762	1	18
	763	1	6
	Total ..	3	4

Simla-4, the 30th January, 1962

No. 4-4/62-Rev. I.—Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that land is likely to be required to be taken by the Himachal Pradesh Administration at the public expense for a public purpose, namely for the construction of Gram Sewak Hut, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.

2. This Notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, as applied to Himachal Pradesh to all whom it may concern.

3. In exercise of the powers conferred by the aforesaid section, the Lieutenant Governor is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

4. Any person interested who has any objection to the acquisition of any land in the locality may, within thirty days of the publication of this Notification, file an objection in writing before the Collector, Mahasu district, Himachal Pradesh, Kasumpti.

SPECIFICATION

District: MAHASU *Tehsil:* JUBBAL

Village	Khasra No.	Area Big.	Area Bis.
1	2	3	4
MANDAL	12/1	2	11

By order,
G. M. LAUL,
Joint Secretary.

Simla-4, the 21st December, 1961

No. 4-78/61-Rev. I.—Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that the land is required to be taken by the Government at public expense for a public purpose, namely for construction of Shilla-Khad-Sarol *kuhl*, it is hereby declared that the land described in the specification below is required for the above purpose.

2. The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector,Land Acquisition, Himachal Pradesh, Public Works Department, is hereby directed to take order for the acquisition of the said land.

3. A plan of the land may be inspected in the office of the Collector, Land Acquisition, Himachal Pradesh, Public Works Department, Chamba district, Chamba.

SPECIFICATION

District: CHAMBA *Tehsil:* CHAMBA

Village	Khasra No.	Area Big.	Area Bis.
1	2	3	4
SUGAL	95	0	6
	98	0	2
	104	0	3
	224/1	0	3
	225	0	3
	226/1	0	11
	227/1	0	7
	228/1	0	7
	234	0	8
	235	0	4
	562/1	0	6
	573	0	3
	576/1	0	1
	578	0	1
	580/1	0	11
	617	0	8
	648	0	5
	654	0	8
	668	0	18
	665	0	7
	690	0	10
	750	0	1
	1080	0	10
	1081	0	7
	1098	0	11
	1110	0	14
	Total ..	8	15

Whereas it appears to the Lieutenant Governor, Himachal Pradesh, that the land is required to be taken by the Government at public expense for a public purpose*. It is hereby declared that the land described in the specification below is required for the said* purpose.

2. The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Mandi district, Himachal Pradesh, is hereby directed to take order for the acquisition of the said land.

3. A plan of the land may be inspected in the office of the Collector, Mandi district, Mandi, Himachal Pradesh.

No. 4-27/61-Rev. I. Simla-4, the 18th December, 1961

*Extension of Agricultural Colony at Khaliar

SPECIFICATION

District: MANDI *Tehsil:* SADAR

Village	Khasra No.	Area Sq. Yds.	Area Sq. Ft.
1	2	3	4
MANDI TOWN (KHALIAR).	8181	909	6
	8182	909	6
	8185	849	3
	8186	954	3
	8188	954	3
	8189	909	6
	Total ..	5487	0

No. 6-40/60-Rev. I. Simla-4, the 18th December, 1961

**Construction of Police Station Building with Staff Quarters.*

SPECIFICATION

District: MANDI *Tehsil:* SARKAGHAT

Village	Khasra No.	Area Big.	Bis.	Bisw.
1	2	3	4	5
SARKAGHAT	970/4	2	15	18

No. R. 25-580/59 Simla-4, the 21st December, 1961

**Construction of Booking Office at Mandi*

SPECIFICATION

District: MANDI *Tehsil:* SADAR

Village	Khasra No.	Area Sq. Yds.	Sq. Ft.
1	2	3	4
MANDI TOWN	2297/1	6714	1
	2276/1	1103	7
	2299/2/1	250	0
	2276/4/2	603	1
	Total ..	8671	0

No. I-50/61-Rev. I. Simla-4, the 6th January, 1962

**Construction of Ayurvedic Dispensary Building with Staff Quarters at Nihri.*

SPECIFICATION

District: MANDI *Tehsil:* KARSOG

Village	Khasra No.	Area Big.	Bis.
1	2	3	4
TIKKAR	958	3	17

No. 4-93/61-Rev. I. Simla-4, the 16th January, 1962

**Extension of Cattle Breeding Farm, Kataula*

SPECIFICATION

District: MANDI *Tehsil:* SADAR

Village	Khasra No.	Area Big.	Bis.	Bisw.
1	2	3	4	5
GHARPA	97	3	13	1
	98	0	5	0
	Total ..	3	18	1

By order,
BEAS DEV,
Joint Secretary.

No. 6-180/60-Rev. I. Simla-4, the 31st January, 1962

**Establishment of Poultry Extension Centre at Jogindernagar*

SPECIFICATION

District: MANDI *Tehsil:* JOGINDERNAGAR

Village	Khasra No.	Area Big.	Bis.	Bisw.
1	2	3	4	5
SERI	478/315	1	2	16
	595/492	1	12	2
	576/490	0	2	2
	597/176 min	1	0	5
	365/178 min	0	10	0
	369/179	0	7	5
	376/183	0	2	17
	597/176 min	1	6	0
	365/178 min	1	16	7
	493/477	0	8	11
	Total ..	7	14	5

By order,
G. M. LAUL,
Joint Secretary.

भाग 2—वैधानिक नियमों को छोड़ कर विभिन्न विभागों के अध्यक्षों और ज़िला मैजिस्ट्रेटों द्वारा अधिसूचनाएं इत्यादि

INDUSTRIES DEPARTMENT

OFFICE ORDERS

Simla-4, the 12th January, 1962

No. I&S. 15-(AB)-722/59.—In partial supersession of this Department Office Order of even number, dated the 9th September, 1961 and in exercise of the powers vested in me *vide* para. 3 of the General Financial Rules, Volume I (Fresh Edition), I hereby declare the Employment Officer, Employment Exchange, Bilaspur (Himachal Pradesh) as Head of Office and Drawing and Disbursing Officer in respect of Employment Exchange, Bilaspur under major head "46—Labour and Employment".

2. The Employment Officer, Employment Exchange, Bilaspur will be Controlling Officer for travelling allowance in respect of Class III and IV Employees of the said office.

Simla-4, the 12th January, 1962

No. I&S. 15-(AB)-722/59.—In supersession of this Department Office Order of even number, dated the 7th June, 1961 and in exercise of the powers vested in me *vide* para. 3 of the General Financial Rules, 1958, Volume I (Fresh Edition), I hereby declare the Employment Officer, Employment Exchange, Kalpa (Kinnaur district) as Head of Office and Drawing and Disbursing Officer in respect of the Employment Exchange, Kalpa (Kinnaur district) under major head "46—Labour and Employment".

2. The Employment Officer, Employment Exchange, Kalpa in Kinnaur district (Himachal Pradesh) will be Controlling Officer for travelling allowance in respect of Class III and IV Employees working in the said office.

G. S. DEWAN,
Director of Employment.

NOTIFICATION

Simla-4, the 14th February, 1962

No. I&S. 15-(Est.)-5/57.—*Ex-post-facto* sanction to the grant of 19 days earned leave with effect from 15th January to 2nd February, 1962 with permission to prefix January 13 and 14, 1962, being gazetted holidays, is hereby accorded in favour of Shri B. B. Gupta, Textile Expert, Industries Department, Himachal Pradesh.

2. Shri Gupta would have continued to officiate as Textile Expert but for his proceeding on leave.

By order,
GOBIND SAHAI,
Director of Industries.

भाग 3—वैधानिक नियम तथा हिमाचल प्रदेश के उप-राज्यपाल, जुडिशल कमिश्नर्ज कोर्ट, फाइनेन्शल कमिश्नर, ऐक्साइज एण्ड टैक्सेशन कमिश्नर तथा कमिश्नर आफ् इन्कम-टैक्स द्वारा अधिसूचित आदेश इत्यादि

REVENUE DEPARTMENT

NOTIFICATION

Simla-4, the 10th January, 1962

No. R. 25-768/59-II.—The Financial Commissioner, Himachal Pradesh, is pleased to order the following promotions. transfers and postings with immediate effect:—

1. Shri Narain Dass, Naib-Tehsildar, Sub-Tehsil Kumarsain (Offg. as Tehsildar, Kasumpti against leave vacancy) is promoted as officiating Tehsildar and posted as Offg. Tehsildar, Kasumpti *vice* Shri Lakhanpal transferred.
2. Shri B. R. Lakhanpal, Tehsildar, Kasumpti, Mahasu district at present on leave is transferred and posted as Tehsildar Karsog, Mandi district, *vice* Shri Faqir Chand transferred.
3. Shri Faqir Chand, Offg. Tehsildar, Karsog, Mandi district is transferred to Forest Department against vacant post.
4. Shri Vijai Singh, Offg. Naib-Tehsildar, Land Acquisition, Mandi is promoted as Offg. Tehsildar and posted as Assistant Land Acquisition Officer (Tehsildar), Mandi under the Beas-Sutlej Link Scheme.
5. Shri Paras Ram, Offg. Naib-Tehsildar, Sub-Tehsil Suni is promoted as officiating Tehsildar and posted as Offg. Tehsildar, Chopal, Mahasu district *vice* Shri Jaishi Ram transferred.
6. Shri Jaishi Ram, Offg. Tehsildar, Chopal, Mahasu district is transferred to Forest Department against vacant post.
7. Shri Nitya Nand, Offg. Naib-Tehsildar, Forest is promoted as Offg. Tehsildar and posted as Offg. Tehsildar, Jubbal, Mahasu district *vice* Shri Shanker Dass transferred.
8. Shri Shanker Dass, Tehsildar, Jubbal is transferred to Forest Department against vacant post.

2. Sarvshri Narain Dass, Vijai Singh, Paras Ram and Nitya Nand who have qualified the departmental examination of Tehsildar will be entitled to the grade of Rs. 270-15-300-25-400/25-550.

CORRIGENDUM

Simla-4, the 15th January, 1962

No. R. 25-768/59-II.—In partial modification of this Administration Notification of even number, dated the 10th January, 1962, the Financial Commissioner, Himachal Pradesh, is pleased to order that transfer of Sarvshri Shankar Das, Tehsildar, Jubbal and Nitya Nand will be enforced in March-April, 1962. Shri Nitya Nand, who has been promoted as officiating Tehsildar, is posted as officiating Tehsildar in the Forest Department till then against the vacant post.

By order,
O. N. MISRA,
Financial Commissioner.

भाग 4—स्थानीय स्वायत्त शासन : म्युनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटीफाइड और टाउन एरिया तथा पंचायत विभाग

LOCAL SELF GOVERNMENT DEPARTMENT

NOTIFICATIONS

Simla-4, the 18th January, 1962

No. LSG. 62-28/57.—Whereas under section 4 of the Punjab Municipal Act, 1911, as applied to Himachal Pradesh, a proposal for conversion of Small Town Committee Rampur into a Municipality was published in Himachal Pradesh Rajpatra, dated the 11th November, 1961, *vide* Notification of even number, dated the 30th September, 1961 and also by affixing a copy of the said Notification and its translation in Hindi in conspicuous places as contemplated in section 4 (3) of the said Act, for inviting objections from the inhabitants of the said areas.

And whereas, no objection has been received within the prescribed period;

Now, therefore, in exercise of the powers vested in him under section 4 of the Punjab Municipal Act, 1911, as applied to Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh, is pleased to order the conversion of Small Town Committee into a Municipal Committee of the second class comprising the areas as defined in this department Notification of even number, dated the 30th September, 1961.

Simla-4, the 23rd January, 1962

No. 11-14/61-LSG.—In exercise of the powers conferred by section 3 (1) (*b*) of the Punjab Small Towns Act, 1922, as applied to Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh, proposes to include the areas specified in the schedule given below, within the limits of S.T.C. Paonta, as constituted *vide* Notification No. (3) L-58-37/49-II, dated the 8th April, 1953:—

SCHEDULE

(*a*) Hadbast No. 114 containing an area of 381 Bighas and 13 Biswas Kita No. 70.

(*b*) Hadbast No. 121 having an area of 562 Bighas and 11 Biswas Kita No. 100.

(*c*) Hadbast No. 117 having an area of 202 Bighas and 18 Biswas Kita No. 70.

(*d*) Hadbast No. 112 having an area of 10 Bighas and 18 Biswas Kita No. 2.

East village Shamsherpur, West—Badripur, North village Taruwala, South—Bhuppur.

2. Any inhabitant of the said area or the S.T.C. who desires to object to the proposal should submit his objections in writing to the Under Secretary (L.S.G.) to the Himachal Pradesh Administration through the Deputy Commissioner, Sirmur district within three months from the date of publication of this Notification in the Himachal Pradesh Administration Gazette. The objections, if any, received within the prescribed period will be duly considered before finalising the proposal.

By order,
K. B. SRIVASTAVA,
Secretary.

भाग 5—वैयक्तिक अधिसूचनाएं और विज्ञापन

Notice under section 12 (2)(b) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, Act No. 15 of 1954

IN THE COURT OF THE DISTRICT JUDGE MANDI AND CHAMBA DISTRICTS AT MANDI

CIVIL MISC. APPEAL NO. 4 OF 1962

Shrimati Manswali Wd/o Laxmi Kumar, caste Rajput, R/o Nagar Mandi . . (Appellant).

Versus

1. Shri Jindu Ram son of Jai Ram, caste Rajput, R/o Takoli, Illaqa Balindhi Sanor, Tehsil Sadar, District Mandi (Respondent).
2. Shri Chandar Shamsher Singh S/o Kesti Singh, caste Rajput, R/o Mandi Town.

Appeal from the order of the Compensation Officer, Mandi, dated 6th January, 1962.

To

Shri Jindu Ram and Shri Shamsher Singh, Respondents.

Take notice that an appeal from the order of the Compensation Officer, Mandi, dated 6th January, 1962 has been presented by Smt. Manswali and registered in this Court and that the 7th April, 1962 has been fixed by this Court the date for hearing of this appeal.

If no appearance is made on your behalf, by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and seal of the Court, this 24th day of February, 1962.

OM PARKASH,
District Judge.

Seal.

Notice under section 12(2)(b) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, Act No. 15 of 1954

IN THE COURT OF THE DISTRICT JUDGE MANDI AND CHAMBA DISTRICTS AT MANDI

CIVIL MISC. APPEAL No. 3 OF 1962

Shrimati Manswali Wd/o Laxmi Kumar, caste Rajput, R/o Nagar Mandi (Appellant).

Versus

1. Shri Jindu Ram son of Jai Ram, caste Rajput, R/o Takoli, Illaqa Balindhi Sanor, Tehsil Sadar, District Mandi (Respondent),

2. Shri Chandar Shamsher Singh S/o Kesti Singh, caste Rajput, R/o Mandi Town.

Appeal from the order of the Compensation Officer, Mandi, dated 6th January, 1962.

To

Shri Jindu Ram and Shri Chandar Shamsher Singh, Respondents.

Take notice that an appeal from the order of the Compensation Officer, Mandi, dated 6th January, 1962, has been presented by Shrimati Manswali and registered in this Court, and that the 7th April, 1962, has been fixed by this Court the date for hearing of this appeal

If no appearance is made on your behalf, by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and seal of the Court, this 24th day of February, 1962.

OM PARKASH,
District Judge

Seal.

इश्तहार

बमदालत साहिब सीनियर सब-जज बहादुर जिलामण्डी

नं० मुकद्दमा 4/2 बावत सन् 1962

सोहनू राम वल्द लोहका, जात चमार, मा० रेती, परगना बनेह, तहसील घुमारवीं।

बनाम

अवाम उल नास।

जो कि सोहनू राम वल्द लोहका, जात चमार, साकिन रेती, परगना बनेह, ने दर्खास्त हसूल सर्टिफिकेट जायें नशीनी हब्बे दफा 372 एक्ट बरामद हिंद नं० 38 सन् 1925 लिखवा आवारड गुरुवरन मुतकफी अदालत हजा में पेश की है जो तारीख 16-2-62 को मंजूर हो कर दर्ज रजिस्टर हुई, लिहाजा बवासर आवारड बरादरान करावत दारान मुतकफी इश्तहार हजा जारी किया जाता है कि जिस शख्स को लिखन दखलिन मजकूर उजरदारी करनी हो वह किसन अज तारीख पेशगी 24 माह 3 सन् 1962 हाजिर अदालत हजा हो कर अपना उजर पेश करे वरना कोई उजर बाद इनकजाए 24-3-62 तारीख मजकूरा समाअत न होगा।

आज बतारीख 23 माह 2 सन् 1962 बदस्तखत हमारे दस्तखत व मोहर अदालत से जारी किया गया।

(मोहर)

केदार ईश्वर,
सीनियर सब-जज।

भाग 6—भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन

INDUSTRIES DEPARTMENT

NOTIFITCAION

Simla-4, the 24th January, 1962

No. I&S. Admn. 15-(Lab)-387/60.—The Government of India, Ministry of Home Affairs Notification No. F. 2/8/61-Judl. II, dated the 13th October, 1961 is reproduced below for the general information.

T. S. NEGI,
Secretary.

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi-11, the 13th October, 1961/21st Asvina, 1883

S. O.—In pursuance of clause (1) of Article 239 of the Constitution, the President hereby directs that the Lieutenant Governor, of Himachal Pradesh and the Chief Commissioners of Delhi, Manipur, Tripura and the Andaman and Nicobar Islands, shall, subject to the control of the President, exercise the powers and discharge the functions of the State Governments under the Motor Transport Workers Act, 1961 (27 of 1961) within their respective Union Territories.

[No. F. 2/8/61-Judl. II.]

A. V. VENKATASUBHAN,
Deputy Secretary,
to the Government of India.

भाग 7—भारतीय निर्वाचन आयोग (Election Commission of India) की वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं

शून्य

भाग 8—हिमाचल प्रदेश क्षेत्रीय परिषद् द्वारा अधिसूचित आदेश इत्यादि

शून्य

अनुपूरक

शून्य

PRINTED AND PUBLISHED IN INDIA BY THE MANAGER HIMACHAL PRADESH ADMINISTRATION PRESS SIMLA-3

FINANCE DEPARTMENT

NOTIFICATION

Simla-4, the 15th March, 1962

No. 19/7/61-FIN(R&E).—The Lieutenant Governor, Himachal Pradesh Administration is pleased to order that from the date of the publication of this Notification the Post Office 12-Year National Savings Certificates/ National Plan Savings Certificates can, at any time after 12 months from the date of purchase, be utilised for payment of Government dues. In case any holder intends to utilise National Savings Certificates/National Plan Savings Certificates for this purpose, he should fill in a prescribed form (obtainable at Post Offices) and present them duly discharged together with the form duly filled in to the official to whom payment of such Government dues is to be made. In the event of the holder being illiterate, his thumb impression on the Certificate and on the above mentioned prescribed form should be attested by a Government official. The official to whom payment is authorised should keep in his personal custody the certificate along with the form of authorisation until it is sent to the Post Office (where the Certificates are registered) for encashment. No interest will accrue on such Certificates after the expiry of 3 months from the date the form of authorisation is signed. The officer to whom payment is authorised should without any loss of time encash the Certificates from the Post Office where it is registered.

2. The value of a National Savings Certificate/National Plan Savings Certificate for the payment of Government dues will be its surrender value at the date of payment. The surrender values are clearly shown on the reverse of each Certificate.

In case the actual amount realisable from the holder is less than the surrender value of the Certificate on the date of presentation he shall be entitled to the refund of the balance due to him.

4. The interest that will accrue after the date of surrender of a National Savings Certificate/National Plan Savings Certificate in payment of Government dues if the Certificate is not encashed at once is creditable to the Revenue of the Administration as the holder of the Certificate after the date the Certificate is tendered, has no claim on the amount of the Certificate and the interest accrued thereon.

BISHAN CHANDRA,
Secretary.

भाग 2—वैधानिक नियमों को छोड़ कर विभिन्न विभागों के अध्यक्षों और जिला मैजिस्ट्रेटों द्वारा अधिसूचनाएं इत्यादि

FOREST DEPARTMENT

NOTIFICATIONS

Simla-4, the 9th January, 1962

No. Ft. 29-370/48-IX.—In exercise of the powers vested in me under para. 3 of the General Financial Rules, Volume I (First Edition), I hereby declare the following Forest Officers as Heads of Offices and Drawing and Disbursing Officers in respect of Major Head "10—Forests":—

1. Divisional Forest Officer, Planning Forest Division, Headquarter at Simla.
2. Divisional Forest Officer, Research Forest Division, Headquarter at Simla.

These officers will also be the controlling officers for travelling allowance in respect of Class III and IV employees posted under them from the date of issue of this order.

These officers will be direct under the control of Chief Conservator of Forests, Himachal Pradesh, Simla who will be the controlling officer in respect of T.A. of the above Divisional Forest Officers.

Simla-4, the 24th January, 1962

No. Ft. 12-39/58-II.—Shri G. S. Negi P.F.S. II, Attached Officer, Jubbal Forest Division is hereby temporarily transferred to Nahan Forest Division, Nahan upto the end of April, 1962 in the interest of service.

Simla-4, the 30th January, 1962

No. Ft. 29-370/48-IV.—In exercise of the powers vested in me under para. 3 of the G.F.R. Volume I (First Edition), I hereby declare the following Forest Officers as Head of Offices and Drawing and Disbursing Officers in respect of Major Head "10—Forests":—

(*i*) Divisional Forest Officer, Sutlej Valley Working Plan Division, Headquarter at Sarahan, District Mahasu (Himachal Pradesh).

(*ii*) Divisional Forest Officer, Kinnaur Working Plan Division, Headquarter at Nichar, District Kinnaur (Himachal Pradesh).

(*iii*) Divisional Forest Officer, Mandi Working Plan Division, Headquarter at Mandi, District Mandi (Himachal Pradesh).

(*iv*) Divisional Forest Officer, Tharoach Rawingarh Dhadi Working Plan Division, Headquarter at Jubbal, District Mahasu (Himachal Pradesh).

These officers will also be controlling officers for travelling allowance in respect of Class III and IV employees posted under them from the date of issue of this order.

V. P. AGARWALA,
Chief Conservator of Forests

OFFICE OF THE DEPUTY DIRECTOR OF FISHERIES, HIMACHAL PRADESH

OFFICE ORDER

Simla-1, the 17th February, 1962

No. 13/62.—In exercise of the powers vested in me *vide* rule (2) of Part B of Rules regulating Fishing in Himachal Pradesh issued under Himachal Pradesh Government Notification No. Ft. 3-43/48, dated the 23rd February, 1952, the following authorities are hereby authorised to issue "TROUT ANGLING LICENSES" within the jurisdictions specified against each:—

Sl. No.	*Name of authority*	*Jurisdiction*
1.	Assistant Warden of Fisheries, Mahasu district with H/qrs. at Chirgaon.	River Pabar and its tributaries (in Rohru Valley) except Beat No. 3 and 4.
2.	Assistant Warden of Fisheries, Kinnaur district with H/qrs. at Sangla.	River Baspa and its tributaries in Sangla Valley.
3.	Fisheries Research Assistant, Barot.	River Uhl and its tributaries in Barot Valley.

H. L. TANDAN,
Deputy Director.

भाग 3—वैधानिक नियम तथा हिमाचल प्रदेश के उप-राज्यपाल, जुडिशल कमिश्नर, कोर्ट, फाइनेन्शल कमिश्नर, ऐक्साइज एण्ड टैक्सेशन कमिश्नर तथा कमिश्नर आफ इन्कम-टैक्स द्वारा अधिसूचित आदेश इत्यादि

अन्य

भाग 4 —स्थानीय स्वायत्त शासन : म्युनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटीफाइड एरिया तथा पंचायत विभाग

शून्य

भाग 5—वैयक्तिक अधिसूचनाएं और विज्ञापन

Notice under section 12 (2)(b) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, Act No. 15 of 1954

IN THE COURT OF THE DISTRICT JUDGE MANDI AND CHAMBA DISTRICTS AT CHAMBA

CIVIL MISC. APPEAL No. 53 OF 1961

Shri Tani son of Mangtu, caste Rajput, R/o Loteg, Pargana Sahu, Tehsil and District Chamba (Appellant).

Versus

Shri Sawaru son of Qasim, caste Musalman Gujjar, R/o Chili-de-Bchi, Pargana Sahu, District Chamba, (Minor) under the guardianship of Dulla, uncle (Respondent).

To

Shri Sawaru (Minor) under the guardianship of Dulla, respondent.

Take notice that an appeal from the order of the Compensation Officer, Chamba, dated 31st May, 1961 has been presented by Tani and registered in this Court, and that the 29th March, 1962 has been fixed by this Court the date for hearing of this appeal.

If no appearance is made on your behalf, by yourself, your pleader, or by some one by law authorized to act, for you in this appeal, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, this 5th day of March, 1962.

OM PARKASH,
Seal. *District Judge.*

Notice under section 12(2)(b) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, Act No. 15 of 1954

IN THE COURT OF THE DISTRICT JUDGE MANDI AND CHAMBA DISTRICTS AT MANDI

CIVIL MISC. APPEAL No. 6 OF 1962

Shri Vidya Sager, Kundan Lal sons of Parshotam Ram, caste Khatri, R/o Mandi Town (Appellants).

Versus

Shri Kanyagtu son of Jogi, caste Chanal, R/o Deohi, Illaqa Machhrot, Tehsil Chachiot (Respondent).

Appeal from the order of the Compensation Officer, Mandi, dated 11th January, 1962.

To

Shri Kanyagtu respondent.

Take notice that an appeal from the order of the Compensation Officer, Mandi, dated 11th January, 1962, has been presented by Vidya Sager and another and registered in this Court, and that the 19th April, 1962, has been fixed by this Court the date for hearing of this appeal.

If no appearance is made on your behalf, by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, this 5th day of March, 1962.

OM PARKASH,
Seal. *District Judge.*

Before Shri Bishan Dass Compensation Officer, Sirmur District, Nahan

Application No. 282 of 1961

In the matter of Shri Rikhi Ram S/o Pala, caste Bahati, of village Tokion, Tehsil Paonta (Tenant).

Versus

Shri Gosain, and others (Landowners).

Application under section 11 of Act No. XV of 1954, for grant of proprietary rights.

To

Shri Rakha S/o Subha, caste Badi, resident of village Nari, Tehsil Unna, District Hoshiarpur (Punjab).

Whereas it has been proved to the satisfaction of this Court that Shri Rakha S/o Subha, caste Badi, resident of village Nari, Tehsil Unna, District Hoshiarpur (Punjab) cannot be served in ordinary way, therefore, this proclamation under Order V, Rule 20, C. P. C. is hereby issued informing the said Shri Rakha that he should appear in this Court on the 5-4-1962 either in person or through a pleader duly instructed. In default of appearance the application will be heard and determined in *ex-parte*.

Given under my hand and seal of the court this 3rd day of March, 1962.

BISHAN DASS,
Seal. *Compensation Officer.*

Before Shri Bishan Dass Compensation Officer, Sirmur District, Nahan

Application No. 283 of 1961.

In the matter of Shri Rulia S/o Achharu, caste Bahati of village Sainwala, Tehsil Paonta (Tenant).

Versus

Sarvshri Gosain etc. (Landowners).

Application for acquisition of proprietary rights under Act No. XV of 1954

To

Shri Rakha s/o Subha, caste Badi, resident of village Nari, Tehsil Unna, District Hoshiarpur (Punjab).

Whereas it has been proved to the satisfaction of this Court that Shri Rakha S/o Subha, caste Bedi, resident of village Nari, Tehsil Unna, District Hoshiarpur (Punjab) cannot be served in ordinary way, therefore this proclamation under Order V, Rule 20, C.P.C. is hereby issued informing the said Shri Rakha that he should appear in this Court on the 5-4-1962 either in person or through a pleader duly instructed. In default of appearance the application will be heard and determined in *ex-parte*.

Given under my hand and seal of the court this 3rd day of March, 1962.

BISHAN DASS,
Seal. *Compensation Officer.*

भाग 6—भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन

LAW DEPARTMENT

NOTIFICATION

Simla-4, the 16th October, 1961

No. 1-7/60-LR.—The Income-tax Act, 1961 (No. 43 of 1961) recently passed by the Parliament of India and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 14th September, 1961 is hereby republished in the Himachal Pradesh Administration Rajpatra for the information of general public.

S. R. MAHANTAN,
Under Secretary

Assented to on 13-9-61.

THE INCOME-TAX ACT, 1961

(ACT No. 43 OF 1961)

AN

ACT

to consolidate and amend the law relating to income-tax and super-tax

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Income-tax Act, 1961

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) "agricultural income" means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such;

(*b*) any income derived from such land by —

(*i*) agriculture; or

(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (*ii*) of this sub-clause;

(*c*) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (*ii*) and (*iii*) of sub-clause (*b*) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building;

(2) "annual value", in relation to any property, means its annual value as determined under section 23;

(3) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Income-tax under sub-section (1) of section 117;

(4) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252;

(5) "approved gratuity fund" means a gratuity fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part C of the Fourth Schedule;

(6) "approved superannuation fund" means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part B of the Fourth Schedule;

(7) "assessee" means a person by whom income-tax or super-tax or any other sum of money is payable under this Act, and includes—

(*a*) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(*b*) every person who is deemed to be an assessee under any provision of this Act;

(*c*) every person who is deemed to be an assessee in default under any provision of this Act;

(8) "assessment" includes re-assessment,

(9) "assessment year" means the period of twelve months commencing on the 1st day of April every year;

(10) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income;

(11) "average rate of super-tax" means the rate arrived at by dividing the amount of super-tax calculated on the total income, by such total income;

(12) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (4 of 1924);

(13) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(*i*) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(*ii*) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;

(*iii*) agricultural land in India,

(15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any object of general public utility not involving the carrying on of any activity for profit;

(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax under sub-section (1) of section 117;

(17) "company" means—

(*i*) any Indian company, or

(*ii*) any association, whether incorporated or not and whether Indian or non-Indian, which is or was assessable or was assessed under the Indian Income-tax Act, 1922 (11 of 1922), as a company for the assessment year commencing on the 1st day of April, 1947, or which is declared by general or special order of the Board to be a company for the purposes of this Act;

(18) "company in which the public are substantially interested"—A company is said to be a company in which the public are substantially interested—

(*a*) if it is a company owned by the Government or in which not less than forty per cent of the shares are held by the Government; or

(*b*) if it is not a private company as defined in the Companies Act 1956 (1 of 1956), and

(*i*) its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting powers have been allotted unconditionally to, or acquired unconditionally by, and where throughout the relevant previous year beneficially held by, the Government or a corporation established by a Central, State or Provincial Act or the public (not being a director, or a company to which this clause does not apply);

(*ii*) the said shares were at any time during the relevant previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and

(*iii*) the affairs of the company, or the shares carrying more than fifty per cent of its total voting power were at no time during the relevant previous year controlled or held by five or less persons.

Explanation 1.—In computing the number of five or less persons aforesaid,—

(*i*) the Government or any corporation established by a Central, State or Provincial Act or company to which

this clause applies shall not be taken into account, and

(*ii*) persons who are relatives of one another, and persons who are nominees of any other person together with that other person, shall be treated as a single person.

Explanation 2.—In its application to any such company as is referred to in sub-clause (2) of clause (*iii*) of section 109, sub-clause (*b*) shall have effect as if for the words "not less than fifty per cent" and "more than fifty per cent" the words "not less than forty per cent" and "more than sixty per cent" had been substituted;

(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

(20) "director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956);

(21) "Director of Inspection" means a person appointed to be a Director of Inspection under sub-section (1) of section 117, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection;

(22) "dividend" includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

(*b*) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(*c*) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;

(*d*) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not;

(*e*) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder, being a person who has a substantial interest in the company, or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

but "dividend" does not include—

(*i*) a distribution made in accordance with sub-clause (*c*) or sub-clause (*d*) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;

(*ii*) any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(*iii*) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (*e*), to the extent to which it is so set off.

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (*a*), (*b*), (*d*) and (*e*), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (*c*) shall include all profits of the company up to the date of liquidation;

(23) "firm", "partner" and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932); but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership.

(24) "income" includes—

(*i*) profits and gains;

(*ii*) dividend;

(*iii*) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;

(*iv*) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(*v*) any sum chargeable to income-tax under clauses (*ii*) and (*iii*) of section 28 or section 41 or section 59;

(*vi*) any capital gains chargeable under section 45;

(*vii*) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;

(25) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 117;

(26) "Indian company" means a company formed and registered under the Companies Act, 1956 (1 of 1956) and includes—

(*i*) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir);

(*ii*) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State:

Provided that the registered office of the company in all cases is in India;

(27) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under sub-section (1) of section 117;

(28) "Inspector of Income-tax" means a person appointed to be an Inspector of Income-tax under sub-section (2) of section 117;

(29) "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908);

(30) "non-resident" means a person who is not a "resident", and for the purposes of sections 92, 93, 113 and 168, includes a person who is not ordinarily resident within the meaning of sub-section (6) of section 6.

(31) "person" includes—

(*i*) an individual,

(*ii*) a Hindu undivided family

(*iii*) a company,

(*iv*) a firm,

(*v*) an association of persons or a body of individuals, whether incorporated or not,

(*vi*) a local authority, and

(*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses;

(32) "person who has a substantial interest in the company", in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power;

(33) "prescribed" means prescribed by rules made under this Act;

(34) "previous year" means the previous year as defined in section 3;

(35) "principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(36) "profession" includes vocation;

(37) "public servant" has the same meaning as in section 21 of the Indian Penal Code (45 of 1860);

(38) "recognised provident fund" means a provident

fund which has been and continues to be recognised by the Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952);

(39) "registered firm" means a firm registered under the provisions of clause (*a*) of sub-section (1) of section 185 or under that provision read with sub-section (7) of section 184;

(40) "regular assessment" means the assessment made under section 143 or section 144,

(41) "relative", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual;

(42) "resident" means a person who is resident in India within the meaning of section 6;

(43) "tax" means income-tax and super-tax chargeable under the provisions of this Act;

(44) "Tax Recovery Officer" means—

(*i*) a Collector;

(*ii*) an additional Collector or any other officer authorised to exercise the powers of a Collector under any law relating to land revenue for the time being in force in a State; or

(*iii*) any gazetted officer of the Central or a State Government who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer;

(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;

(46) "total world income" includes all income wherever accruing or arising, except incomes which are not included in the total income under any of the provisions of Chapter III and except any capital gains which are not includible in the total income of an assessee;

(47) "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law;

(48) "unregistered firm" means a firm which is not a registered firm.

3. **"Previous year" defined.**—(1) For the purposes of this Act, "previous year" means—

(*a*) the financial year immediately preceding the assessment year; or

(*b*) if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, the twelve months ending on such date; or

(*c*) in the case of any person or business or class of persons or business not falling within clause (*a*) or clause (*b*), such period as may be determined by the Board or by any authority authorised by the Board in this behalf; or

(*d*) in the case of a business or profession newly set up in the said financial year, the period beginning with the date of the setting up of the business or profession and—

(*i*) ending with the said financial year, or

(*ii*) if the accounts of the assessee, have been made up to a date within the said financial year, then, at the option of the assessee, ending on that date, or

(*iii*) ending with the period, if any, determined under clause (*c*),

as the case may be; or

(*e*) in the case of a business or profession newly set-up in the twelve months immediately preceding the said financial year—

(*i*) if the accounts of the assessee have been made up to a date within the said financial year and the period from the date of the setting up of the business or profession to such date does not exceed twelve months, then, at the option of the assessee, such period, or

(*ii*) if any period has been determined under clause (*c*), then the period beginning with the date of the setting up of the business or profession and ending with that period, as the case may be; or

(*f*) where the assessee is a partner in a firm and the firm has been assessed as such, then, in respect of the assessee's share in the income of the firm, the period determined as the previous year for the assessment of the income of the firm; or

(*g*) in respect of profits and gains from life insurance business, the year immediately preceding the assessment year for which annual accounts are required to be prepared under the Insurance Act, 1938 (4 of 1938) or under that Act read with section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956).

(2) Where an assessee has newly set up a business or profession in the said financial year and his accounts are made up to a date in the assessment year in respect of a period not exceeding twelve months from the date of such setting up, then, notwithstanding anything contained in sub-clause (*iii*) of clause (*d*) of sub-section (1), the assessee shall, in respect of that business or profession, at his option, be deemed to have no previous year for the said assessment year under that clause and such option shall, in relation to the immediately succeeding assessment year, have effect as an option exercised under sub-clause (*i*) of clause (*e*) of sub-section (1).

(3) Subject to the other provisions of this section, an assessee may have different previous years in respect of separate sources of his income.

(4) Where in respect of a particular source of income or in respect of a business or profession newly set-up, an assessee has once exercised the option under clause (*b*) or sub-clause (*ii*) of clause (*d*) or sub-clause (*i*) of clause (*e*) of sub-section (1) or has once been assessed, then, he shall not, in respect of that source, or, as the case may be, business or profession, be entitled to vary the meaning of the expression "previous year" as then applicable to him, except with the consent of the Income tax Officer and upon such conditions as the Income-tax Officer may think fit to impose.

CHAPTER II

Basis of Charge

4. **Charge of Income-tax.**—(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

5. **Scope of total income.**—(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(*a*) is received or is deemed to be received in India in such year by or on behalf of such person; or

(*b*) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(*c*) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(*a*) is received or is deemed to be received in India in such year by or on behalf of such person; or

(*b*) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.—Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2.—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is

received or deemed to be received by him in India.

6. **Residence in India.**—For the purposes of this Act—

(1) An individual is said to be resident in India in any previous year, if he—

(*a*) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or

(*b*) maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to one hundred and eighty-two days or more in that year and has been in India for thirty days or more in that year; or

(*c*) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be resident in India in any previous year, if—

(*i*) it is an Indian company; or

(*ii*) during that year, the control and management of its affairs is situated wholly in India.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is—

(*a*) an individual who has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more; or

(*b*) a Hindu undivided family whose manager has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of or periods amounting in all to, seven hundred and thirty days or more.

7. **Income deemed to be received.**—The following incomes shall be deemed to be received in the previous year:—

(*i*) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in rule 6 of Part A of the Fourth Schedule;

(*ii*) the transferred balance in a recognised provident fund, to the extent provided in sub-rule (4) of rule 11 of Part A of the Fourth Schedule.

8. **Dividend income.**—For the purposes of inclusion in the total income of an assessee, any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) or sub-clause (*d*) or sub-clause (*e*) of clause (22) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be.

9. **Income deemed to accrue or arise in India.**—(1) The following incomes shall be deemed to accrue or arise in India—

(*i*) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through or from any money lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situate in India;

Explanation.—For the purposes of this clause—

(*a*) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India;

(*b*) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

Provided that the non-resident has no office or agency in India for this purpose and the goods are not subjected to any kind of manufacturing process before being exported from India.

(*ii*) income which falls under the head "Salaries", if it is earned in India;

(*iii*) income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India;

(*iv*) a dividend paid by an Indian company outside India.

(2) Notwithstanding anything contained in sub-section (1), any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th day of August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

10. **Incomes not included in total income.**—In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(1) agricultural income;

(2) any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family;

(3) any receipts which are of a casual and non-recurring nature, unless they are—

(*i*) capital gains, chargeable under the provisions of section 45; or

(*ii*) receipts arising from business or the exercise of a profession or occupation; or

(*iii*) receipts by way of addition to the remuneration of an employee;

(4) in the case of a non-resident, any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development or under a loan agreement between the Central Government and the Development Loan Fund of the United States of America or by any industrial undertaking or financial corporation in India under a loan agreement with the said Bank or Fund, as the case may be, which is guaranteed by the Central Government;

(5) subject to such conditions as the Central Government may prescribe, the value of any travel concession or assistance received by or due to any person, being a citizen of India, from his employer for himself, his wife and children, in connection with his proceeding on leave to his home-district in India;

(6) in the case of an individual who is not a citizen of India,—

(*i*) subject to such conditions as the Central Government may prescribe, passage moneys or the value of any free or concessional passage received by or due to such individual from his employer for himself, his wife and children, in connection with his proceeding on home leave out of India;

(*ii*) the remuneration received by him as ambassador, high commissioner, envoy, minister, *charge d' affairs*, commissioner, counsellor or the secretary, adviser or attache of an embassy, high commission, legation or commission of a foreign State, for service in such capacity;

(*iii*) the remuneration received by him as a *consul de carriere*, whether called a consul-general, consul, vice-consul, consular agent, pro-consul or by any other name, of a foreign State for service in such capacity;

(*iv*) the remuneration received by him as a trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such

in an honorary capacity), if the remuneration of the corresponding officials, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country;

(*v*) the remuneration received by him as a member of the staff of any of the officials referred to in clause (*ii*), clause (*iii*) or clause (*iv*), if the member—

(*a*) is a subject of the country represented,

(*b*) is not engaged in any business or profession or employment in India otherwise than as a member of such staff, and further, where the individual is a member of the staff of any official referred to in clause (*iv*), if the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Government;

(*vi*) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

(*a*) the foreign enterprise is not engaged in any trade or business in India;

(*b*) his stay in India does not exceed in the aggregate a period of ninety days in such previous year; and

(*c*) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act;

(*vii*) the remuneration due to or received by him chargeable under the head "Salaries" for services rendered as a technician in the employment of the Government or of a local authority or of any corporation set up under any special law or in any business carried on in India, if he was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India to the extent mentioned below—

(*a*) where his contract of service was approved by the Central Government before the commencement of his service—

(*i*) in the case of a technician who has special knowledge and experience in industrial or business management techniques, such remuneration due to or received by him during the period of six months commencing from the date of his arrival in India;

(*ii*) in case of any other technician, such remuneration due to or received by him during the thirty-six months commencing from the date of his arrival in India, and where any such person continues to remain in employment in India after the expiry of the thirty-six months aforesaid and the tax on his income chargeable under the head "Salaries" is paid by the employer to the Central Government [which tax in the case of an employer being a company may be paid notwithstanding anything contained in section 200 of the Companies Act, 1956 (1 of 1956)] the tax so paid by the employer for a period not exceeding twenty-four months following the expiry of the thirty-six months aforesaid;

(*b*) in any other case, not being the case of a technician who has special knowledge and experience in industrial or business management techniques, such remuneration due to or received by him for the period of three hundred and sixty-five days in all commencing from the date of his arrival in India.

Explanation.—"Technician" means a person having specialised knowledge and experience in—

(*i*) constructional or manufacturing operations, or in mining or in the generation or distribution of electricity or any other form of power, or

(*ii*) industrial or business management techniques;

who is employed in India in a capacity in which such specialised knowledge and experience are actually utilised.

(*viii*) any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year;

(7) any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India;

(8) in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State (the terms whereof provide for the exemption given by this clause)—

(*a*) the remuneration received by him directly or indirectly from the Government of that foreign State for such duties; and

(*b*) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State;

(9) the income of any member of the family of any such individual as is referred to in clause (8) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State;

(10) any death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act or any payment of retiring gratuity received after the first day of June, 1953 under the New Pension Code applicable to the members of the Defence Services; or any other gratuity not exceeding one half month's salary for each year of completed service, calculated on the basis of the average salary for the three years immediately preceding the year in which the gratuity is paid, subject to a maximum of twenty-four thousand rupess or fifteen month's salary so calculated, whichever is less;

(11) any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies;

(12) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule;

(13) any payment from an approved superannuation fund made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary;

(14) any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite within the meaning of clause (2) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose;

(15) (*i*) monthly payment on the 15 Year Annuity Certificates issued by or under the authority of the Central Government or such other annuity certificates issued by or under the authority of that Government as that Government may, by notification in the Official Gazette, specify in this behalf, to the extent to which the amounts of the certificates do not exceed in each case the maximum amount which is permitted to be invested therein;

(*ii*) interest on Treasury Savings Deposit Certificates, Post Office Cash Certificates, Post Office National Savings Certificates, National Plan Certificates, Twelve Year National Plan Savings Certificates and such other certificates issued by the Central Government as that Government may, by notification in the Official Gazette, specify in this behalf, and interest on deposits in Post Office Savings Banks, to the extent to which the amounts of such certificates or deposits do not exceed in each case the maximum amount which is permitted to be invested or deposited therein;

(*iii*) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949;

(*iv*) interest payable—

(*a*) by Government or a local authority on moneys borrowed by it from sources outside India;

(*b*) by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered into with any such financial institution in a foreign country as may be approved in this behalf by the Central Government by general or special order;

(*c*) by an industrial undertaking in India on any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of raw materials or capital plant and machinery, in any case where the loan or debt is approved by the Central Government, having regard to its terms generally and in particular to the terms of its repayment;

(16) scholarships granted to meet the cost of education;

(17) any daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof;

(18) any payment made, whether in cash or in kind, by the Central Government or any State Government in pursuance of gallantry awards instituted or approved by the Central Government;

(19) any amount received by the Ruler of an Indian State as privy purse under article 291 of the Constitution;

(20) the income of a local authority which is chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service within its own jurisdictional area;

(21) any income of a scientific research association for the time being approved for the purpose of clause (*ii*) of sub-section (1) of section 35 which is applied solely to the purposes of that association;

(22) any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit;

(23) any income of an association or institution established in India having as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may specify in this behalf from time to time by notification in the Official Gazette:

Provided that—

(*i*) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established;

(*ii*) no part of the income of the association or institution is distributed in any manner to its members except as grants to any association or institution affiliated to it; and

(*iii*) the association or institution is, for the time being, approved for the purpose of this clause by the Central Government by general or special order;

(24) any income chargeable under the head "Interest on securities", "Income from house property" and "Income from other sources" of a registered union within the meaning of the Indian Trade Unions Act, 1926 (16 of 1926) formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen;

(25) (*i*) interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities;

(*ii*) any income received by the trustees on behalf of a recognised provident fund;

(*iii*) any income received by the trustees on behalf of an approved superannuation fund;

(26) in the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the Union Territories of Manipur and Tripura, who is not in the service of Government, any income which accrues or arises to him,

(*a*) from any source in the area or Union Territories aforesaid, or

(*b*) by way of dividend or interest on securities.

11. Income from property held for charitable or religious purposes.—(1) Subject to the provisions of sections 60 to 63 the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(*a*) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five per cent of the income from the property or rupees ten thousand, whichever is higher;

(*b*) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India, and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from the property held under trust in part;

(*c*) income from property held under trust—

(*i*) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(*ii*) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

Explanation.—For the purposes of clauses (*a*) and (*b*), in computing twenty-five per cent of the income from any such property as is referred to in the said clauses for any previous year, the income from such property for the year immediately preceding the previous year may be adopted, if that income is higher than the income for the previous year.

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clause (*a*) or clause (*b*) of sub-section (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with—

(*a*) such persons have, by notice in writing given to the Income-tax Officer in the prescribed manner, specified the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(*b*) the money so accumulated or set apart is invested in any Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944), or in any other security which may be approved by the Central Government in this behalf,

(3) Any income referred to in sub-section (1) or sub-section (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the pevrious year in which it is so applied, or ceases to be so accumulated or so set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act, relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes and accordingly chargeable to tax within the meaning of sub-section (3).

12. Income of trusts or institutions from voluntary contributions.—(1) Any income of a trust for charitable or religious purposes or of a charitable or religious institution derived from voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of the trustees or the institution, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), where any such contributions as are referred to in sub-section (1) are made to a trust or a charitable or religious institution by a trust or a charitable or religious institution to which the provisions of section 11 apply, such contributions shall, in the hands of the trust or institution receiving the contributions, be deemed to be income derived from property for the purposes of that section and the provisions of that section shall apply accordingly.

13. Section 11 not to apply in certain cases.—Nothing

contained in section 11 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(*a*) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(*b*) in the case of a trust or charitable institution created or established after the commencement of this Act, any income thereof,

(*i*) if the trust or institution is created or established for the benefit of any particular religious community or caste; or

(*ii*) if under the terms of the trust or the rules governing the institution any part of such income enures directly or indirectly for the benefit of the author of the trust or the founder of the institution or any relative of such author or founder, and, where the author of the trust or the founder of the institution is a Hindu undivided family, any part of such income enures directly or indirectly for the benefit of any member of the Hindu undivided family or any relative of any member of the family.

Explanation 1.—For the purposes of sections 11 and 12 and this section, "trust" includes any other legal obligation and for the purposes of this section "relative" also includes a lineal descendant of a brother or sister.

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of sub-clause (*i*) of clause (*b*) of this section

CHAPTER IV

Computation of Total Income

Heads of income

14. Heads of income.—Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—

A.—Salaries.
B.—Interest on securities.
C.—Income from house property
D.—Profits and gains of business or profession
E.—Capital gains.
F.—Income from other sources.

A.—Salaries

15. Salaries.—The following income shall be chargeable to income-tax under the head "Salaries"—

(*a*) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(*b*) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(*c*) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation.—For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

16. Deductions from salaries.—The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely:—

(*i*) any amount not exceeding five hundred rupees, expended by the assessee on the purchase of books and other publications necessary for the purpose of his duties;

(*ii*) in respect of any allowance in the nature of an entertainment allowance specifically granted to the assessee by his employer—

(*a*) in the case of an assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less; and

(*b*) in the case of any other assessee who is in receipt of such entertainment allowance and has been continuously in receipt of such entertainment allowance regularly from his present employer from a date before the 1st day of April, 1955, the amount of such entertainment allowance regularly received by the assessee from his present employer in any previous year ending before the 1st day of April, 1955, or a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or seven thousand five hundred rupees, whichever is the least;

(*iii*) any amount paid by the assessee in respect of taxes on professions, trades, callings or employments levied under any State or Provincial Act;

(*iv*) where the assessee is not in receipt of a conveyance allowance, whether as such or as part of his salary, and owns a conveyance which is used for the purposes of his employment, such sum as the Income-tax Officer may estimate in respect of such use as representing the expenditure incurred by him in its maintenance and as representing its normal wear and tear;

(*v*) any amount actually expended by the assessee, not being an amount expended on the purchase of books or other publications, or on entertainment or on the maintenance of a conveyance, which, by the conditions, of his service, he is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties.

17. "Salary", "perquisite" and "profits in lieu of salary" defined.—For the purposes of sections 15 and 16 and of this section,—

(1) "salary" includes—

(*i*) wages;

(*ii*) any annuity or pension;

(*iii*) any gratuity;

(*iv*) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(*v*) any advance of salary;

(*vi*) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule; and

(*vii*) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof;

(2) "perquisite" includes—

(*i*) the value of rent-free accommodation provided to the assessee by his employer;

(*ii*) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

(*iii*) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(*a*) by a company to an employee who is a director thereof;

(*b*) by a company to an employee being a person who has a substantial interest in the company;

(*c*) by any employer (including a company) to an employee to whom the provisions of paragraphs (*a*) and (*b*) of this sub-clause do not apply and whose income under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds eighteen thousand rupees;

(*iv*) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee; and

(*v*) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund, to effect an assurance on the life of the assessee or to effect a contract for an annuity;

(3) "profits in lieu of salary" includes—

(*i*) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(*ii*) any payment [other than any payment referred to in clause (10), clause (11) or clause (12) of section 10], due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee

or interest on such contributions.

B.—Interest on securities

18. Interest on securities.—(1) The following amounts due to an assessee in the previous year shall be chargeable to income-tax under the head "Interest on securities",—

(*i*) interest on any security of the Central or State Government;

(*ii*) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

(2) Nothing contained in sub-section (1) shall be construed as precluding an assessee from being charged to income-tax in respect of any interest on securities received by him in a previous year if such interest had not been charged to income-tax for any earlier previous year.

19. Deductions from interest on securities.—Subject to the provisions of section 21, the income chargeable under the head "Interest on securities" shall be computed after making the following deductions—

(*i*) any reasonable sum expended by the assessee for the purpose of realising such interest;

(*ii*) any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee.

20. Deductions from interest on securities in the case of a banking company.—(1) In the case of a banking company—

(*i*) the sum to be regarded as a sum reasonably expended for the purpose referred to in clause (*i*) of section 19 shall be an amount bearing to the aggregate of its expenses as are admissible under the provisions of sections 30, 31, 36 and 37 [other than clauses (*iii*), (*vi*) and (*vii*) of sub-section (1) of section 36] the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under section 18 bear to the gross receipts of the company from all sources which are included in the profit and loss account of the company;

(*ii*) the amount to be regarded as interest payable on moneys borrowed for the purpose referred to in clause (*ii*) of section 19 shall be an amount which bears to the amount of interest payable on all moneys borrowed by the company the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under section 18 bear to the gross receipts from all sources which are included in the profit and loss account of the company.

(2) The expenses deducted under clauses (*i*) and (*ii*) of sub-section (1) shall not again form part of the deductions admissible under sections 30 to 37 for the purposes of computing the income of the company under the head "Profits and gains of business or profession".

Explanation.—For the purposes of this section, "moneys borrowed" includes moneys received by way of deposits.

21. Amounts not deductable from interest on securities.—Notwithstanding anything contained in sections 19 and 20, any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B, and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted in computing the income chargeable under the head "Interest on securities".

C.—Income from house property

22. Income from house property.—The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

23. Annual value how determined.—(1) For the purposes of section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year:

Provided that where the property is in the occupation of a tenant and the taxes levied by any local authority in respect of the property are, under the law authorising such levy, payable wholly by the owner, or partly by the owner and partly by the tenant, a deduction shall be made equal to the part, if any, of the tenant's liability borne by the owner.

Explanation.—For the purposes of this sub-section in the case of a property the construction of which was completed before the 1st day of April, 1950, the total amount of such taxes, and in the case of any other property, one-half of the total amount of such taxes shall be deemed to be the tenant's liability.

Provided further that in the case of a building comprising one or more residential units the erection of which is begun and completed after the 1st day of April, 1961, the annual value as determined under this sub-section shall, for a period of three years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(*i*) in respect of any residential unit whose annual value as so determined, does not exceed six hundred rupees, by the amount of such annual value;

(*ii*) in respect of any residential unit whose annual value as so determined exceeds six hundred rupees, by an amount of six hundred rupees;

so, however, that the income in respect of any residential unit is in no case a loss.

(2) Where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall first be determined as in sub-section (1) and further be reduced by one-half of the amount so determined or one thousand eight hundred rupees, whichever is less:

Provided that where the sum so arrived at exceeds ten per cent of the total income of the owner, the excess shall be disregarded.

Explanation.—Where any such residential unit as is referred to in the second proviso to sub-section (1) is in the occupation of the owner for the purposes of his own residence, nothing contained in that proviso shall apply in computing the annual value of that residential unit.

(3) Where the property referred to in sub-section (2) consists of one residential house only and it cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house shall—

(*a*) if the house was not actually occupied by the owner during the whole of the previous year, be taken to be *nil*, or

(*b*) if the house was actually occupied by the owner for a fraction of the previous year, be taken to be that fraction of the annual value determined under sub-section (2):

Provided that the following conditions are in either case fulfilled:—

(*i*) the house is not actually let, and

(*ii*) no other benefit therefrom is derived by the owner.

24. Deductions from income from house property.—(1) Income chargeable under the head "Income from house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely:—

(*i*) in respect of repairs,—

(*a*) where the property is in the occupation of the owner, or where the property is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of the annual value;

(*b*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs,—

(*i*) the excess of the annual value over the amount of rent payable for a year by the tenant; or

(*ii*) a sum equal to one-sixth of the annual value whichever is less;

(*ii*) the amount of any premium paid to insure the property against risk of damage or destruction;

(*iii*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortagage or charge;

(*iv*) where the property is subject to an annual charge, not being a capital charge, the amount of such charge;

(*v*) where the property is subject to a ground rent, the amount of such ground rent;

(*vi*) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital,

the amount of any interest payable on such capital;

(*vii*) any sums paid on account of land revenue in respect of the property.

(*viii*) any sums spent to collect the rent from the property not exceeding six per cent. of the annual value of the property;

(*ix*) where the poroperty is let and was vacant during a part of the year, that part of the annual value which is proportionate to the period during which the property is wholly unoccupied, or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied; and

(*x*) subject to such rules as may be made in this behalf, the amount in respect of rent from property let to a tenant which the assessee cannot realise.

(2) The total amount deductible under sub-section (1) in respect of property of the nature referred to in sub-section (3) of section 23 shall not exceed the annual value of the property as determined under section 23.

25. Amounts not deductible from income from house property.—Notwithstanding anything contained in section 24, any annual charge or interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted in computing the income chageable under the head "Income from house property".

26. Property owned by co-owners.—Where property consisting of building or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

27. "Owner of house property", "annual charge" etc. defined.—For the purposes of sections 22 to 26—

(*i*) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;

(*ii*) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;

(*iii*) a member of a co-operative society to whom a building or part thereof is allotted or leased under a house building scheme of the society shall be deemed to be the owner of that building or part thereof;

(*iv*) "annual charge" means a charge to secure an annual liability but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government;

(*v*) "capital charge" means a charge to secure the discharge of a liability of a capital nature;

(*vi*) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

D.—Profits and gains of business or profession

28. Profits and gains of business or profession.—The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(*i*) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year;

(*ii*) any compensation or other payment due to or received by,—

(*a*) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(*b*) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto;

(*c*) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto;

(*iii*) income derived by a trade, professional or similar association from specific services performed for its members.

Explanation 1.—The profits and gains of a business shall include the profits and gains of managing agency.

Explanation 2.—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

29. Income from profits and gains of business or profession, how computed.—The income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to 43.

30. *Rent, rates, taxes, repairs and insurance for buildings.*—In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—

(*a*) where the premises are occupied by the assessee—

(*i*) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

(*ii*) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;

(*b*) any sums paid on account of land revenue, local rates or municipal taxes;

(*c*) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

31. Repairs and insurance of machinery, plant and furniture.—In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

(*i*) the amount paid on account of current repairs thereto;

(*ii*) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.

32. Depreciation.—(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed—

(*i*) in the case of ships other than ships ordinarily plying on inland waters, such percentage on the actual cost thereof to the assessee as may in any case or class of cases be prescribed;

(*ii*) in the case of buildings, machinery, paint or furniture, other than ships covered by clause (*i*), such percentage on the written down value thereof as may in any case or class of cases be prescribed;

(*iii*) in the case of any building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof:

Provided that such deficiency is actually written off in the books of the assessee.

Explanation.—For the purposes of this clause,—

(1) "moneys payable" in respect of any building, machinery, plant or furniture includes—

(*a*) any insurance, salvage or compensation moneys payable in respect thereof;

(*b*) where the building, machinery, plant or furniture is sold, the price for which it is sold;

(2) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force.

(*iv*) in the case of any building which has been newly erected after the 31st day of March, 1961, where the building is used solely for the purpose of residence of persons employed in the business and drawing a remuneration not exceeding two hundred rupees per mensem, or where the building is used solely or mainly for the

welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, a sum equal to twenty per cent of the actual cost of the building to the assessee in respect of the previous year of erection of the building; but any such sum shall not be deductible in determining the written down value for the purposes of clause (*ii*) of sub-section (1).

(2) Where, in the assessment of the assessee, (or, if the assessee is a registered firm or an unregistered firm assessed as a registered firm, in the assessment of its partners) full effect cannot be given to any allowance under clause (*i*) or clause (*ii*) or clause (*iv*) of sub-section (1) in any previous year owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or part of the allowance to which effect has not been given as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years.

33. Development rebate.—(1) In respect of a new ship acquired or new machinery or plant (other than office appliances or road transport vehicles) installed after the 31st day of March, 1954, which is owned by the assessee and is wholly used for the purposes of the business carried on by him, a sum by way of development rebate, equivalent to—

(*i*) in the case of a ship acquired after the 31st day of December, 1957, forty per cent. and in the case of a ship acquired before the 1st day of January, 1958, twenty-five per cent of the actual cost of the ship to the assessee, and

(*ii*) in the case of machinery or plant installed before the 1st day of April, 1961, twenty-five per cent and in the case of machinery or plant installed after the 31st day of March, 1961, twenty per cent of the actual cost of the machinery or plant to the assessee,

shall, subject to the provisions of section 34, be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year.

(2) In the case of a ship acquired or machinery or plant installed after the 31st day of December 1957, where the total income of the essessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be, [the total income for this purpose being computed without making any allowance under sub-section (1)] is *nil* or is less than the full amount of the development rebate calculated at the rate applicable thereto under that sub-section,—

(*i*) the sum to be allowed by way of development rebate for that assessment year under sub-section (1) shall be only such amount as is sufficient to reduce the said total income to *nil*; and

(*ii*) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.

Explanation.—Where for any assessment year development rebate is to be allowed in accordance with the provisions of sub-section (2) in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for this purpose being computed without making any allowance under sub-section (1)] is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely.—

(*i*) the allowance under clause (*ii*) of sub-section (2) shall be made before any allowance under clause (*i*) of that sub-section is made; and

(*ii*) where an allowance has to be made under clause (*ii*) of sub-section (2) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(3) Where in a scheme of amalgamation, a company (hereinafter in this sub-section referred to as the predecessor) sells or otherwise transfers to the company formed in pursuance of the predecessor's amalgamation with that company (hereinafter in this sub-section referred to as the successor) any ship, machinery or plant in respect of which development rebate has been allowed to the predecessor under sub-section (1),—

(*a*) the successor shall continue to fulfil the conditions mentioned in sub-section (3) of section 34 in respect of the reserve created by the predecessor and in respect of the period within which such ship, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5) of section 155 shall apply to the successor as they would have applied to the predecessor had it committed the default;

(*b*) the balance of development rebate, if any, still outstanding to the predecessor in respect of such ship, machinery or plant shall be allowed to the successor in accordance with the provisions of sub-section (2), so, however, that the total period for which the balance of development rebate shall be carried forward in the assessments of the predecessor and the successor shall not exceed the period of eight years specified in sub-section (2) and the successor shall be treated as the assessee in respect of such ship, machinery or plant for the purposes of section 33 and section 34.

Explanation.—For the purposes of this sub-section, "amalgamation" means the merger of two or more companies (each of which is hereinafter in this *Explanation* referred to as the amalgamating company) to form one company (hereinafter in this *Explanation* referred to as the amalgamated company) in such a manner that—

(*i*) all the property of the amalgamating companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(*ii*) all the liabilities of the amalgamating companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation; and

(*iii*) shareholders holding not less than nine-tenths in value of the shares of the amalgamating companies immediately before the amalgamation become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company;

and includes the merger of a subsidiary company in the holding company, where the whole of the share capital of the subsidiary company is held by the holding company or its nominee and the subsidiary company is an Indian company.

(4) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any ship, machinery or plant, the provisions of clauses (*a*) and (*b*) of sub-section (3) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this clause shall apply only where—

(*i*) all the property of the firm relating to the business

immediately before the succession becomes the property of the company;

(*ii*) all the liabilities of the firm relating to the business immediately beofore the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

34. Conditions for depreciation allowance and development rebate.—(1) The deductions referred to in sub-section (1) of section 32 shall be allowed only if the prescribed particulars have been furnished; and the deduction referred to in section 33 shall be allowed only if the particulars prescribed for the purpose of clause (*i*) and clause (*ii*) of sub-section (1) of section 32 have been furnished by the assessee in respect of the ship or machinery or plant.

(2) For the purposes of section 32—

(*i*) the aggregate of all deductions in respect of depreciation made under sub-section (1) of section 32 or under the Indian Income-tax Act, 1922 (11 of 1922), or under any Act repealed by that Act or under the Indian Income-tax Act, 1886 (2 of 1886), shall, in no case, exceed the actual cost to the assessee of the buildings, machinery, plant or furniture, as the case may be;

Explanation.—Where a capital asset is transferred by a company to a subsidiary company, then, if the conditions of clause (*iv*) of section 47 are satisfied, in determining the aggreagate of all deductions in respect of depreciation under this clause, account shall also be taken of the deductions in respect of depreciation allowed in the case of the company from which the asset has been transferred.

(*ii*) nothing in clause (*i*) or clause (*ii*) or clause (*iv*) of sub-section (1) of section 32 shall be deemed to authorise the allowance for any previous year of any sum in respect of any building, machinery, plant or furniture sold, discarded, demolished or destroyed in that year.

(3) (*a*) The deduction referred to in section 33 shall not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than—

(*i*) for distribution by way of dividends or profits; or

(*ii*) for remittance outside India as profits or for the creation of any asset outside India:

Provided that this clause shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948) or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958.

(*b*) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5) of section 155 shall apply accordingly:

Provided that this clause shall not apply—

(*i*) where the ship has been acquired or the machinery or plant has been installed before the first day of January, 1958; or

(*ii*) where the ship, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*iii*) where the sale or transfer of the ship, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (3) or sub-section (4) of section 33.

35. Expenditure on scientific research.—(1) In respect of expenditure on scientific research, the following deductions shall be allowed—

(*i*) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business,

(*ii*) any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research:

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority;

(*iii*) any sum paid to a university, college or other institution to be used for research in social science or statistical research related to the class of business carried on, being a university, college or institution which is for the time being approved for the purposes of this clause by the prescribed authority;

(*iv*) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2).

(2) For the purposes of clause (*iv*) of sub-section (1),—

(*i*) one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous years.

Explanation.—Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced,

(*ii*) notwithstanding anything contained in clause (*i*), where an asset representing expenditure of a capital nature ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deducations already allowed under clause (*i*) falls short of the said expenditure, then—

(*a*) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and

(*b*) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year;

(*iii*) if the asset mentioned in clause (*ii*) is sold, without having been used for other purposes, in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place;

(*iv*) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed under clauses (*i*), (*ii*) and (*iii*) of sub-section (1) of section 32 for the same previous year in respect of that asset;

(*v*) where the asset is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under clauses (*i*), (*ii*) and (*iii*) of sub-section (1) of section 32.

(3) If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question, to the prescribed authority, whose decision shall be final.

(4) The provisions of sub-section (2) of section 32 shall apply in relation to deductions allowable under clause (*iv*) of sub-section (1) as they apply in relation to deductions allowable in respect of depreciation.

36. Other deductions.—(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

(*i*) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;

(*ii*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission·

Provided that the amount of the bonus or commission is reasonable with reference to —

(*a*) the pay of the employee and the conditions of his service;

(*b*) the profits of the business or profession for the previous year in question; and

(*c*) the general practice in similar business or profession;

(*iii*) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

(*iv*) any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be; and subject to such conditions as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head 'Salaries' or to the contributions or to the number of members of the fund;

(*v*) any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;

(*vi*) in respect of animals which have been used for the purposes of the business or profession otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the actual cost to the assessee of the animals and the amount, if any, realised respect of the carcasses or animals;

(*vii*) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year;

(*viii*) in respect of any special reserve created by a financial corporation which is engaged in providing long-term finance for industrial development in India, an amount not exceeding ten per cent of the total income carried to such reserve account:

Provided that the corporation is for the time being approved by the Central Government for the purposes of this clause:

Provided further that where the aggregate of the amounts carried to such reserve account from time to time exceeds the paid-up share capital (excluding the amounts capitalised from reserves) of the corporation, no allowance under this clause shall be made in respect of such excess.

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply:—

(*i*) no such deduction shall be allowed unless such debt or part thereof—

(*a*) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and

(*b*) has been written off as irrecoverable in the accounts of the assessee for that previous year;

(*ii*) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt of part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;

(*iii*) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year, but the Income-tax Officer, had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;

(*iv*) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year and the Income-tax Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply.

37. **General.**—(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(2) Notwithstanding anything contained in sub-section (1), no expenditure in the nature of entertainment expenditure shall be allowed in the case of a company, which exceeds the aggregate amount computed as hereunder:—

(*i*) on the first Rs. 10,00,000 of the profits and gains of the business (computed before making any allowance under section 33 or in respect of entertainment expenditure),	at the rate of 1 per cent of Rs. 5,000, whichever is higher,
(*ii*) on the next Rs. 40,00,000 of the profits and gains of the business (computed in the manner aforesaid),	at the rate of 3/4 per cent,
(*iii*) on the next Rs. 1,20,00,000 of the profits and gains of the business (computed in the manner aforesaid),	at the rate of 1/2 per cent,
(*iv*) on the balance of the profits and gains of the business (computed in the manner aforesaid).	nil

38. **Building, etc., partly used for business etc., or not exclusively so used.**—(1) Where a part of any premises is used as dwelling house by the assessee,—

(*a*) the deduction under sub-clause (*i*) of clause (*a*) of section 30, in the case of rent, shall be such amount as the Income-tax Officer may determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum paid for repairs, such sum as is proportionate to the part of the premises used for the purpose of the business or profession;

(*b*) the deduction under clause (*b*) of section 30 shall be such sum as the Income-tax Officer may determine having regard to the part so used.

(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under sub-clause (*ii*) of clause (*a*) and clause (*c*) of section 30, clauses (*i*) and (*ii*) of section 31 and clauses (*i*), (*ii*) and (*iii*) of sub-section (1) of section 32 shall be restricted to a fair proportionate part thereof which the Income-tax Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

39. **Managing agency commission.**—Where a managing agent of a company is liable under an agreement in writing made for adequate consideration to share managing agency commission with a third party or third parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them under the agreement, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration, such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

40. **Amounts not deductible.**—Notwithstanding anything to the contrary in sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(*a*) in the case of any assessee—

(*i*) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163;

(*ii*) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the

basis of, any such profits or gains.

(*iii*) any payment which is chargeable under the head "Salaries", if it is payable outside India and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B.

(*iv*) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries";

(*b*) in the case of any firm, any payment of interest, salary, bonus, commission or remuneration made by the firm to any partner of the firm;

(*c*) in the case of any company—

(*i*) any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or to a person who has a substantial interest in the company or to a relative of the director or of such person as the case may be,

(*ii*) any expenditure or allowance in respect of any assets of the company used by any person referred to in sub-clause (*i*) either wholly or partly for his own purposes or benefit,

if in the opinion of the Income-tax Officer any such expenditure or allowance as is mentioned in sub-clauses (*i*) and (*ii*) is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing to it therefrom;

Explanation.—The provisions of this clause shall apply notwithstanding that any amount not to be allowed under this clause is included in the total income of any person referred to in sub-clause (*i*);

(*d*) in the case of a banking company, the amounts which have been allowed as a deduction in computing its income chargeable to income-tax under the head "Interest on securities" under the provisions of sub-section (1) of section 20.

41. Profits chargeable to tax.—(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

(2) Where any building, machinery, plant or furniture which is owned by the assessee and which was or has been used for the purposes of business or profession is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business or profession of the previous year in which the moneys payable for the building, machinery, plant or furniture became due:

Provided that where the building sold, discarded, demolished or destroyed is a building to which *Explanation* 5 to section 43 applies, and the moneys payable in respect of such a building, together with the amount of scrap value, if any, exceed the actual cost as determined under that *Explanation*, so much of the excess as does not exceed the difference between the actual cost so determined and the written down value shall be chargeable to income-tax as income of the business or profession of such previous year.

Explanation.—Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business or profession for the purpose of which the building, machinery, plant or furniture was being used is no longer in existence, the provisions of this sub-section shall apply as if the business or profession is in existence in that previous year.

(3) Where an asset representing expenditure of a capital nature on scientific research within the meaning of clause (*iv*) of sub-section (1) of section 35, read with clause (4) of section 43, is sold, without having been used for other purposes, and the proceeds of the sale together with the total amount of the deductions made under clause (*i*) of sub-section (2) of section 35 exceed the amount of the capital expenditure, the excess or the amount of the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place.

Explanation.—Where the moneys payable in respect of any asset referred to in this sub-section become due in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(4) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (*vii*) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

Explanation.—The expression "moneys payable" and the expression "sold" in sub-sections (2) and (3) shall have the same meanings as in sub-section (1) of section 32.

(5) Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under sub-section (1), sub-section (2), sub-section (3) or sub-section (4) in respect of that business or profession, any loss, not being a loss sustained in speculation business or under the head "Capital gains", which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall, so far as may be, be set off against the income chargeable to tax under the sub-sections aforesaid.

42. Special provision for deductions in the case of business for prospecting, etc., for mineral oil.—For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for the association or participation in such business of the Central Government (which agreement has been laid on the Table of each House of Parliament), there shall be made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation—

(*a*) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commerical production by the assessee;

(*b*) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section 32; and

(*c*) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement;

and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

43. Definitions of certain terms relevant to income from profits and gains of business or profession.—In sections 28 to 41 and in this section, unless the context otherwise requires—

(1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof,

of any, as has been met directly or indirectly by any other person or authority:

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under clause (*i*), clause (*ii*) or clause (*iii*) of sub-section (1) of section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (*iv*) of sub-section (1) of section 35 or under any corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922).

Explanation 2.—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the written down value thereof as in the case of the previous owner for the previous year in which the asset is so acquired or the market value thereof on the date of such acquisition, whichever is the less.

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the Income-tax Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances of the case

Explanation 4.—Where assets which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, are re-acquired by him, the actual cost to the assessee shall be the actual cost to him when he first, acquired the assets less the depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922, (11 of 1922) diminished by any loss deducted, or as the case may be, increased by any profit assessed, under the provisions of clause (*iii*) of sub-section (1) of section 32 or sub-section (2) of section 41 of this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) or the actual price for which the asset is re-acquired by him, whichever is the less.

Explanation 5.—Where a building previously the property of the assessee is brought into use for the business or profession after the 28th day of February, 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee.

Explanation 6.—When any capital asset is transferred by a company to its subsidiary company, then, if the conditions of clause (*iv*) of section 47 are satisfied, the actual cost of the transferred capital asset to the subsidiary compay shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business;

(2) "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "Profits and gains of business or profession";

(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession;

(4) (*i*) "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge;

(*ii*) references to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights, in, or arising out of, scientific research;

(*iii*) references to scientific research related to a business or class of business include—

(*a*) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(*b*) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;

(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

(*a*) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(*b*) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(*c*) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;

shall not be deemed to be a speculative transaction.

(6) "written down value" means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee;

(*b*) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922) or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886) was in force.

Explanation 1.—When in a case of succession in business or profession, an assessment is made on the successor under sub-section (2) of section 170 the written down value of any asset shall be the amount which would have been taken as is written down value if the assessment had been made directly on the person succeeded to.

Explanation 2.—When any capital asset is transferred by a company to its subsidiary company, then, if the conditions of clause (*iv*) of section 47 are satisfied, the written down value of the transferred capital asset to the subsidiary company shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

Explanation 3.—Any allowance in respect of any depreciation carried forward under sub-section (2) of section 32 shall be deemed to be depreciation "actually allowed".

44. Insurance business.—Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to 43, the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.

E.—Capital gains

45. Capital gains.—Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53 and 54, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

46. Capital gains on distribution of assets by companies in liquidation.—(1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or

the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (*e*) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

47. Transactions not regarded as transfer.—Nothing contained in section 45 shall apply to the following transfers:—

(*i*) any distribution of capital assets on the total or partial partition of a Hindu undivided family;

(*ii*) any distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons;

(*iii*) any transfer of a capital asset under a gift or will or an irrevocable trust;

(*iv*) any transfer of a capital asset by a company to its subsidiary company, if—

(*a*) the parent company or its nominees hold the whole of the share capital of the subsidiary company; and

(*b*) the subsidiary company is an Indian company.

48. Mode of computation and deductions.—The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:—

(*i*) expenditure incurred wholly and exclusively in connection with such transfer;

(*ii*) the cost of acquisition of the capital asset and the cost of any improvement thereto.

49. Cost with reference to certain modes of acquisition.—Where the capital asset became the property of the assessee—

(*i*) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(*ii*) under a gift or will;

(*iii*) (*a*) by succession, inheritance or devolution, or

(*b*) on any distribution of assets on the dissolution of a firm, body of individuals or other association of persons, or

(*c*) on any distribution of assets on the liquidation of a company, or

(*d*) under a transfer to a revocable or an irrevocable trust, or

(*e*) under any such transfer as is referred to in clause (*iv*) of section 47,

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

50. Special provision for computing cost of acquisition in the case of depreciable assets.—Where the capital asset is an asset in respect of which a deduction on account of depreciation has been obtained by the assessee in any previous year either under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force, the provisions of sections 48 and 49 shall be subject to the following modifications:—

(1) The written down value, as defined in clause (6) of section 43 of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.

(2) Where under any provision of section 49, read with sub-section (2) of section 55, the fair market value of the asset on the 1st day of January, 1954 is to be taken into account at the option of the assessee, then, the cost of acquisition of the asset shall, at the option of the assessee, be the fair market value of the asset on the said date, as reduced by the amount of depreciation, if any, allowed to the assessee after the said date, and as adjusted.

51. Advance money received.—Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

52. Consideration for transfer in cases of under-statement.—Where the person who acquires a capital asset from an assessee is directly or indirectly connected with the assessee and the Income-tax Officer has reason to believe that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under section 45, the full value of the consideration for the transfer shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date of the transfer.

53. Capital gains exempt from tax.—Notwithstanding anything contained in section 45, where a capital gain arises from the transfer of one or more capital assets, being buildings or lands appurtenant thereto, the income of which is chargeable under the head "Income from house property" and the full aggregate value of the consideration for which the transfer is made does not exceed twenty-five thousand rupees, the capital gain shall not be included in the total income of the assessee:

Provided that this section shall not apply in any case where the aggregate of the fair market values of all capital assets, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property" owned by the assessee immediately before the transfer aforesaid is made, exceeds the sum of rupees fifty thousand.

54. Profit on sale of property used for residences.—Where a capital gain arises from the transfer of a capital asset to which the provisions of section 53 are not applicable, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased, or has within a period of two years after that date constructed, a house property for the purposes of his own residence, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost of the new asset, the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

55. Meaning of "adjusted", "cost of improvement" and "cost of acquisition".—(1) For the purposes of sections 48, 49 and 50,—(*a*) "adjusted", in relation to written down value or fair market value, means diminished by any loss deducted or increased by any profit assessed, under the provisions of clause (*iii*) of sub-section (1) of section 32 or sub-section (2) of section 41, as the case may be, the computation for this purpose being made with reference to the period commencing from the 1st day of January, 1954, in cases to which clause (2) of section 50 applies;

(*b*) "cost of any improvement", in relation to a capital asset,—

(*i*) where the capital asset became the property of the previous owner or the assessee before the 1st day of January, 1954, and the fair market value of the asset on that day is taken as the cost of acquisition at the option of the assessee, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(*ii*) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in section 49, by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvement" shall be construed accordingly.

(2) For the purposes of sections 48 and 49, "cost of acquisition", in relation to a capital asset,—

(*i*) where the capital asset became the property of the assessee before the 1st day of January, 1954, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee;

(*ii*) where the capital asset became the property of the assessee by any of the modes specified in section 49, and the capital asset became the property of the previous owner before the 1st day of January, 1954, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee;

(*iii*) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution.

(3) Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

F.—Income from other sources

56. Income from other sources.—(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other sources", namely:—

(*i*) dividends;

(*ii*) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(*iii*) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession".

57. Deductions.—The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:—

(*i*) in the case of dividends, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend on behalf of the assessee;

(*ii*) in the case of income of the nature referred to in clauses (*ii*) and (*iii*) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (*ii*) of clause (*a*) and clause (*c*) of section 30, section 31, and sub-sections (1) and (2) of section 32 and subject to the provisions of sections 34 and 38;

(*iii*) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

58. Amounts not deductible.—Notwithstanding anything to the contrary contained in section 57, the following amounts shall no be deductible in computing the income chargeable under the head "Income from other sources", namely:—

(*a*) in the case of any assessee—

(*i*) any personal expenses of the assessee;

(*ii*) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163;

(*iii*) any payment which is chargeable under the head "Salaries", if it is payable outside India, unless tax has been paid thereon or deducted therefrom under Chapter XVII-B;

(*b*) in the case of a company, any expenditure or allowance of the nature referred to in clause (*c*) of section 40, notwithstanding that the amount thereof is included in the total income of any person referred to in sub-clause (*i*) of clause (*c*) of section 40.

59. Profits chargeable to tax.—(1) The provisions of sub-section (1) of section 41 shall apply, so far as may be, in computing the income of an assessee under section 56, as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

(2) When any buildings, machinery, plant or furniture to which clauses (*ii*) and (*iii*) of sub-section (2) of section 56 apply are sold, discarded, demolished or destroyed, the provisions of sub-section (2) of section 41 shall apply, so far as may be, in computing the income of an assessee under section 56 as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

Explanation.—For the purpose of this section, the expression "sold" shall have the same meaning as in sub-section (1) of section 32.

CHAPTER V

INCOME OF OTHER PERSONS, INCLUDED IN ASSESSEE'S TOTAL INCOME

60. Transfer of income where there is no transfer of assets.—All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

61. Revocable transfer of assets.—All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

62. Transfer irrevocable for a specified period.—(1) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer—

(*i*) by way of trust which is not revocable during the life time of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee; or

(*ii*) made before the first day of April, 1961 which is not revocable for a period exceeding six years

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(2) Notwithstanding anything contained in sub-section (1), all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

63. "Transfer" and "revocable transfer" defined.—For the purposes of sections 60, 61 and 62 and of this section,—

(*a*) a transfer shall be deemed to be revocable if—

(*i*) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(*ii*) it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets;

(*b*) "transfer" includes any settlement, trust, covenant, agreement or arrangement.

64. Income of individual to include income of spouse, minor child, etc.—In computing the total income of any individual, there shall be included all such income as arises directly or indirectly —

(*i*) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;

(*ii*) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner;

(*iii*) subject to the provisions of clause (*i*) of section 27,

to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;

(*iv*) subject to the provisions of clause (*i*) of section 27, to a minor child, not being a married daughter of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration; and

(*v*) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both.

Explanation.—For the purpose of clause (*i*), the individual in computing whose total income the income referred to in that clause is to be included shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater; and, for the purpose of clause (*ii*), where both the parents are members of the firm in which the minor child is a partner, the income of the minor child from the partnership shall be included in the income of that parent whose total income (excluding the income referred to in that clause) is greater; and where ony such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent unless the Income-tax Officer is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do.

65. Liability of person in respect of income included in the income of another person.—Where, by reason of the provisions contained in this Chapter or in clause (*i*) of section 27, the income from any asset or from membership in a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of a notice of demand by the Income-tax Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included, and the provisions of Chapter XVII-D shall, so far as may be, apply accordingly:

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

CHAPTER VI

Aggregation of Income and Set Off or Carry Forward of Loss

Aggregation of Income

66. Total income.—In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VII and any amount in respect of which the assessee is entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year in accordance with, and to the extent, provided in sections 87 and 88.

67. Method of computing a partner's share in the income of the firm.—(1) In computing the total income of an assessee who is a partner of a firm, whether the net result of the computation of total income of the firm is a profit or a loss, his share (whether a net profit or a net loss) shall be computed as follows:—

(*a*) any interest, salary, commission or other remuneration paid to any partner in respect of the previous year shall be deducted from the total income of the firm and the balance ascertained and apportioned among the partners;

(*b*) where the amount apportioned to the partner under clause (*a*) is a profit, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be added to that amount, and the result shall be treated as the partner's share in the income of the firm.

(*c*) where the amount apportioned to the partner under clause (*a*) is a loss, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the partner's share in the income of the firm.

(2) The share of a partner in the income or loss of the firm, as computed under sub-section (1) shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the firm has been determined under each head of income.

(3) Any interest paid by a partner on capital borrowed by him for the purposes of investment in the firm shall, in computing his income chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the firm, be deducted from the share.

(4) If the share of a partner in the income of a registered firm or a firm treated as registered in accordance with the provisions of clause (*b*) of section 183, as computed under this section, is a loss, such loss may be set off, or carried forward and set off, in accordance with the provisions of this Chapter.

Explanation.—In this section, "paid" has the same meaning as is assigned to it in clause (2) of section 43.

68. Cash credits.—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

69. Un-explained investments.—Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Set off, or carry forward and set off

70. Set off of loss from one source against income from another source under the same head of income.—Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

71. Set off of loss from one head against income from another.—Where in respect of any assessment year the net result of the computation under any of the heads of income mentioned in section 14 other than "Capital gains" is a loss to the assessee, the assessee shall, subject to the other provisions of this Chapter, be entitled to have the amount of such loss set off against his income assessable for that assessment year under any other head:

Provided that, where the total income includes any income assessable under the head "Capital gains", the loss computed under any other head of income, if the assessee so desires, shall not be set off against the income under the head "Capital gains" but shall be set off against his income assessable under any other head of income.

72. Carry forward and set off of business losses.—(1) Where for any assessment year the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be wholly set off in accordance with the provisions of section 71, so much of the loss as is not so set off or the whole loss, where the assessee had no income under any other head except "Capital gains", shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and

(*i*) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year:

Provided that the business or profession for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment year; and

(*ii*) if the loss cannot be wholly so set off, the amount

of loss not so set off shall be carried forward to the following assessment year and so on.

(2) Where any allowance or part thereof, is, under sub-section (2) of section 32 or sub-section (4) of section 35, to be carried forward, effect shall first be given to the provisions of this section.

(3) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

73. **Losses in speculation business.**—(1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against and gains, if any, of another speculation business.

(2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*i*) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and

(*ii*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

(4) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

74. **Losses under the head "Capital gains".**—(1) Where in respect of any assessment year the net result of the computation under the head "Capital gains" is a loss to the assessee, such loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and set off against capital gains assessable for that assessment year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following assessment year and so on:

Provided that where the loss computed in respect of any assessee, not being a company, for any assessment year does not exceed five thousand rupees, it shall not be carried forward under this sub-section.

(2) No loss shall be carried forward under sub-section (1) for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

75. **Losses of registered firms.**—(1) Where the assessee is a registered firm, any loss which cannot be set off against any other income of the firm shall be apportioned between the partners of the firm, and they alone shall be entitled to have the amount of the loss set off and carried forward for set off under sections 70, 71, 72 73 and 74.

(2) Nothing contained in sub-section (1) of section 72, sub-section (2) of section 73 or sub-section (1) of section 74 shall entitle any assessee, being a registered firm, to have its loss carried forward and set off under the provisions of the aforesaid sections.

76. **Losses of unregistered firms assessed as registered firms.**—In the case of an un-registered firm assessed under the provisions of clause (*b*) of section 183 in respect of any assessment year, its losses for that assessment year shall be dealt with as if it were a registered firm.

77. **Losses of unregistered firms or their partners.**—(1) Where the assessee is an unregistered firm which has not been assessed as a registered firm under the provisions of clause (*b*) of section 183, any loss of the firm shall be set off or carried forward and set off only against the income of the firm.

(2) Where the assessee is a partner of an unregistered firm which has not been assessed as a registered firm under the provisions of clause (*b*) of section 183 and his share in the income of the firm is a loss, then, whether the firm has already been assessed or not—

(*a*) such loss shall not be set off under the provisions of section 70, section 71, or sub-section (1) of section 73;

(*b*) nothing contained in sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) of section 74 shall entitle the assessee to have such loss carried forward and set off against his own income.

78. **Carry forward and set off of losses in case of change in constitution of firm or on succession.** (1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with section 67 as exceeds his share of profits, if any, of the previous year in the firm, or entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under section 67.

(2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.

79. **Carry forward and set off of losses in the case of certain companies.**—Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless—

(*a*) on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred; or

(*b*) the Income-tax Officer is satisfied that the change in the shareholding was not effected with a view to avoiding or reducing any liability to tax.

80. **Submission of return for losses.**—Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed under section 139, shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) of section 74.

CHAPTER VII

INCOME FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX IS PAYABLE

81. **Income of co-operative societies.**—Income-tax shall not be payable by a co-operative society—

(*i*) in respect of the profits and gains of business carried on by it, if it is—

(*a*) a society engaged in carrying on the business of banking or providing credit facilities to its members; or

(*b*) a society engaged in a cottage industry; or

(*c*) a society engaged in the marketing of the agricultural produce of its members;or

(*d*) a society engaged in the purchase of agricultural immplements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or

(*e*) a society engaged in the processing without the aid of power of the agricultural produce of its members; or

(*f*) a primary society engaged in supplying milk raised by its members to a federal milk co-operative society;

Provided that, in the case of a co-operative society which is also engaged in activities other than those mentioned in this clause, nothing contained therein shall apply to that part of its profits and gains as is attributable to such activities and as exceeds fifteen thousand rupees:

(*ii*) in respect of so much of the profits and gains of business carried on by it as does not exceed fifteen thousand rupees, if it is a co-operative society other than a co-operative society referred to in clause (*i*);

(*iii*) in respect of any interest and dividend derived from its investments with any other co-operative society;

(*iv*) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;

(*v*) in respect of any interest on securities chargeable under section 18 or any income from property chargeable under section 22, where the total income of the Co-operative society does not exceed twenty thousand rupees and the society is not a housing society or an urban consumer's

society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power:

Provided that nothing contained in this section shall apply to a co-operative society carrying on insurance business in respect of the profits and gains of that business computed in accordance with section 44.

Explanation.—For the purposes of this section, "an urban consumer's co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee notified area committee, town area or cantonment.

82. **Dividends from co-operative society.**—Income-tax shall not be payable by an assessee, who is a member of a co-operative society in respect of any dividends received by him form the society.

83. **Income of marketing society.**—Income-tax shall not be payable by an assessee, which is an authority constituted under any law for the time being in force for the marketing commodities, in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

84. **Income of newly established industrial undertakings or hotels.**—(1) Save as otherwise hereinafter provided, income-tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking or hotel to which this section applies as do not exceed six per cent, per annum on the capital employed in the undertaking or hotel, computed in the prescribed manner.

(2) This section applies to any industrial undertaking which fulfils all the following conditions namely:—

(*i*) it is not formed by the splitting up, or the reconstruction of, a business already in existence,

(*ii*) it is not formed by the transfer to a new business of a building, machinery or plant previously used for any purpose;

(*iii*) it has begun or begins to manufacture or produce articles in any part of India at any time within a period of eighteen years from the lst day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particulars industrial undertaking;

(*iv*) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(3) This section applies to any hotel which—

(*a*) starts functioning on or after the first day of April, 1961 and is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business of building, machinery orpl ant previously used for any purpose;

(*b*) is owned and run by a company registered in India with a paid-up capital of not less than five hundred thousand rupees;

(*c*) is run in premises which are owned by the company;

(*d*) has such number and types of guest rooms and povides such amenities as may be prescribed having regard to the population and the tourist importance of the place in which the hotel is located; and

(*e*) is for the time being approved for the purposes of this sub-section by the Central Government.

Explanation.—Where any building, machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the building, machinery or plant or part so transferred does not exceed twenty per cent of the total value of the building, machinery or plant used in the business, then for the purposes of clause (*ii*) of sub-section (2) and clause (*a*) of sub-section (3), the industrial undertaking or hotel to which the transfer has been made shall be deemed to have complied with the condition specified therein and the total value of the building, machinery or plant or part so transferred shall not be taken into account in computing the capital employed in the industrial undertaking or hotel.

(4) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertakings with effect from such date as it may specify in the notifiacation.

(5) The profits or gains of an industrial undertaking or hotel to which this section applies shall be computed in accordance with the provisions contained in Chapter IV-D.

(6) Nothing in this section shall affect the application of the provions contained in Chapter XI-D in relation to the profits or gains of an industrial undertaking or hotel to which this section applies.

(7) The provisions of this section shall, in relation to industrial undertaking, apply to the assessment—

(*i*) for the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles, and

(*ii*) where the assessee is a co-operative society for the six assessment years immediately succeeding and where the assessee is any other person, for the four assessment years immediately succeeding.

(8) The provisions of this section shall, in relation to a hotel, apply to the assessment for the financial year next following the previous year in which the hotel starts functioning and for the four assessments immediately succeeding.

85. **Dividend from new industrial undertaking or hotel.**—Subject to any rules that may be made by the Board in this behalf, income-tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking or a hotel to which section 84 applies as is attributable to that part of the profits or gains on which income-tax is not payable under section 84.

86. **Other incomes.**—Income-tax shall not be payable an assessee in respect of the following —

(*i*) the interest due on any security of the Central Government issued or declared to be income-tax free;

(*ii*) the interest due on any security of a State Government issued income-tax free, the income-tax whereon is payable by the State Government;

(*iii*) if the assessee is a partner of an unregistered firm, any portion of the assessee's share in the profits and gains of the firm computed in the manner laid down in section 67 on which income tax has already been paid by the firm;

(*iv*) if the assessee is a partner of a rgistered firm, the amount which represents the difference between—

(*a*) the assessee's share in the total income of the firm, and

(*b*) his share in such total income as reduced by the income-tax, if any, payable by the firm,

the shares in either case being computed in the manner laid down in section 67; and

(*v*) if the assessee is a member of an association of persons, or a body of individuals other than a Hindu undivided family, a company or a firm, any portion of the amount which he is entitled to receive from the association or body on which income-tax has already been paid by the association or body.

CHAPTER VIII

Rebates and Reliefs

A.—Rebate of income-tax

87. **Rebate on life insurance premia, annuities and contributions to provident funds, etc.**—(1) Subject to the provisions of this section, the assessee shall be entitled to a deduction, from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on the following sums, namely:—

(*a*) where the assessee is an individual, any sums paid in the previous year by the assessee out of his income chargeable to tax—

(*i*) to effect or to keep in force an insurance on the life of the assessee or on the life of the wife or husband of the assessee; or

(*ii*) to effect or to keep in force a contract for a deferred annuity on the life of the assessee or on the life of the wife or husband of the assessee; or

(*iii*) as a contribution to any provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies;

(*b*) where the assessee is a Hindu undivided family, any sums paid in the previous year by the assessee out of its income chargeable to tax, to effect or to keep in force an insurance on the life of any male member

of the family or of the wife of any such member;

(*c*) any sum deducted in the previous year from the salary payable by or on behalf of the Government to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his wife or children, in so far as the sum so deducted does not exceed one-fifth of the salary;

(*d*) if the assessee is an employee participating in a recognised provident fund, his own contributions to his individual account in the fund in the previous year, to the extent provided in rule 7 of Part A of the Fourth Schedule,

(*e*) if the assessee is an employee participating in an approved superannuation fund, any sum paid in the previous year by him by way of contribution towards the superannuation fund.

(2) The provisions of clauses (*a*) and (*b*) of sub-section (1) shall apply only to so much of any premium or other payment made on a policy other than a contract for a deferred annuity as is not in excess of ten per cent of the actual capital sum assured.

Explanation.—In calculating any such capital sum, no account shall be taken—

(*i*) of the value of any permiums agree to be returned, or

(*ii*) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person

(3) The aggregate of the sums in respect of which a deduction of income-tax is allowed under sub-section (1) shall not exceed—

(*i*) in the case of an individual being an author, playwright, artist, musician or actor, such percentage of his total income or such amount as may be prescribed;

(*ii*) in the case of any other individual, twenty-five per cent of the total income or eight thousand rupees, whichever is less;

(*iii*) in the case of a Hindu undivided family, twenty-five per cent of its total income or sixteen thousand rupees, whichever is less.

88. *Donations for charitable purposes.*—(1) Subject to the provisions of this section, the assessee shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year of an amount equal to the income-tax calculated at the average rate of income-tax on any sums paid by him in the previous year as donations to any institution or fund to which this section applies or in respect of any sums paid by him on or after the 1st day of April, 1960, as donations to Government or to any local authority to be utilised for any charitable) purpose.

(2) No deduction shall be made under sub-section (1) if the aggregate of the sums paid as aforesaid by the assessee is less than two hundred and fifty rupees.

(3) No deduction shall be made under sub-section (1) in respect of any sums paid in excess of seven and a half per cent of the assessee's total income as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which a deduction of income-tex has been granted under any other provision of this Chapter, or one hundred and fifty thousand rupees, whichever is less.

(4) The amount of income-tax deductable under this section, together with the amount of super-tax deductible under section 100 shall not in any case exceed half the aggregate of the donations in respect of which the deduction is allowed under this section.

(5) This section applies only to donations to an institution or fund established in India for a charitable purpose which fulfils the following conditions, namely:—

(*i*) if the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (22) of section 10;

(*ii*) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or the fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(*iii*) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(*iv*) the institution or fund maintains regular accounts of its receipts and expenditure; and

(*v*) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956, (1 of 1956), or is a university established by law, or is any other educational institution recognised by the Government or by a university established by law, or affiliated to any university established by law or is an institution financed wholly or in part by the Government or a local authority

Explanation 1.—An institution or fund established for the benefit of scheduled caste, backward classes, scheduled tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (*iii*) of this sub-section.

Explanation 2.—For the removal of doubts, it is hereby declared that a deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be affected merely by reason of the fact that subsequent to the donation any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11.

(6) Notwithstanding anything contained in sub-section (5), this section shall apply to donations given for the renovation or repair of any temple, mosque, gurdwara, church or any other place which is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance.

B.—*Relief for income-tax*

89. Relief when salary, etc., is paid in arrears or in advance.—(1) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate.

(2) Where, by reason of any portion of income from interest on securities being received in arrears, an assessee's total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate

CHAPTER IX

DOUBLE TAXATION RELIEF

90. Agreement with foreign countires.—The Central Government may enter into an agreement—

(*a*) with the Government of any country outside India for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and income-tax in that country, or

(*b*) with the Government of any country outside India for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country;

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

91. Countries with which no agreement exists.—(1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the India income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrued or arose to him during that previous year in

Pakistan he has paid in that country, be by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him—

(*a*) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(*b*) of a sum calculated on that income at the Indian rate of tax;

whichever is less.

(3) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or rise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal

Explanation.—In this section,—

(*i*) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(*ii*) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this section, by the total income;

(*iii*) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country.

(*iv*) the expression "income-tax" in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country

CHAPTER X

Special provisions relating to avoidance of tax

92. Income from transactions with non-residents, how computed in certain cases.—Where a business is carried on between a resident and a non-resident and it appears to the Income-tax Officer that, owing to the close connection between them, the course of business is so arranged that the business transacted between them produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer shall determine the amount of profits which may reasonably be deemed to have been derived therefrom and include such amount in the total income of the resident.

93. Avoidance of income-tax by transaction resulting in transfer of income to non-residents.—(1) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income becomes payable to a non-resident, the following provisions shall apply—

(*a*) where any person has, by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person, would be chargeable to income-tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act;

(*b*) where, whether before or after any such transfer any such first-mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first mentioned person for all the purposes of this Act.

Explanation.—The provisions of this sub-section shall apply also in relation to transfers of assets and associated operations carried out before the commencement of this Act.

(2) Where any person has been charged to income-tax on any income deemed to be his under the provisions this section and that income is subsequently received by him, Whether as inome or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

(3) The provisions of this section shall not apply if the first mentioned person in sub-section (1) shows to the satisfaction of the Income-tax Officer that—

(*a*) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation, or

(*b*) the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

Explanation.—For the purposes of this section,—

(*a*) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(*b*) any body corporate incorporated outside India shall be treated as if it were a non-resident;

(*c*) a person shall be deemed to have power to enjoy the income of a non-resident if —

(*i*) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person in sub-section (1), or

(*ii*) the receipt or accrual of the income operates to increase the value to such first-mentioned persons of any assets held by him or for his benefit, or

(*iii*) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income, or

(*iv*) such first-mentioned person has power by means of the exercise of any power of appointment or power or revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*v*) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;

(*d*) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) (*a*) "assets" includes property or rights of any kind and "transfer" in relation to rights includes the creation of those rights;

(*b*) "associated operation", in relation to any transfer, means an operation of any kind effected by any person in relation to—

(*i*) any of the assets transferred, or

(*ii*) any assets representing, whether directly or indirectly, any of the assets transferred, or

(*iii*) the income arising from any such assets, or

(*iv*) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets;

(*c*) "benefit" includes a payment of any kind;

(*d*) "capital sum" means—

(*i*) any sum paid or payable by way of a loan or repayment of a loan; and

(*ii*) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

94. Avoidance of tax by certain transactions in securities.—(1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as "the owner") sells or transfers those securities, and buys back or re-acquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section be deemed, for all the purposes of this Act, to be income of the owner and not to be the income of any other person.

Explanation.—The references in this sub-section to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securties had been bought back or re-acquired

(2) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(3) The provisions of sub-section (1) or sub-section (2) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the Income-tax Officer—

(*a*) that there has been no avoidance of income-tax, or

(*b*) that the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on a business which consists wholly or partly in dealing in securities buys or acquires any securities and sells back or re-transfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from loss sustained in the business

(5) Sub-section (4) shall have effect subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(6) The Income-tax Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

Explanation.—For the purposes of this section,—

(*a*) "interest" includes a dividend;

(*b*) "securities" includes stocks and shares;

(*c*) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred

CHAPTER XI

SUPER-TAX

A.—General

95. Charge of super-tax.—(1) In addition to the income-tax charged for any assessment year, and save as otherwise provided in this Act, there shall be charged for that assessment year in respect of the total income of the previous year or previous years, as the case may be, of every person, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that assessment year by any Central Act.

Provided that, where by virtue of any provision of this Act super-tax is to be charged in respect of the income of a period other than the previous year, super-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), super-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

(3) In the case of a registered firm, or an unregistered firm which has been assessed in the manner applicable to a registered firm under the provisions of clause (*b*) of section 183, super-tax shall be payable by each partner of the firm individually on his share in the income of the firm and not by the firm itself

96. Total income for super-tax.—Subject to the provisions of this Chapter, the total income of any person shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any assessment year, the assessment shall also be final and conclusive for the purposes of super-tax for the same assessment year.

97. Applicability of Act to super-tax.—(1) All the provisions of this Act relating to the charge, assessment, collection and recovery of income-tax shall apply, so far as may be and save as otherwise provided, to the charge, assessment, collection and recovery of super-tax.

(2) Save as expressly provided in any other section in this Chapter, the provisions of section 4, section 181 and sub-section (1) of section 191 and of Chapters VII and VIII and rules 7 and 8 of Part A of the Fourth Schedule and rule 3 (*c*) of the First Schedule shall not apply to the charge assessment, collection and recovery of super-tax

98. Avoidance of super-tax.—Without prejudice to the generality of the provisions of section 96, the *Explanation to sub-section (1) of section 94, sub-sections* (2), (3) and (6) of that section and section 270 shall apply in relation to super-tax as they apply in relation to income-tax with the modification that references therein to income-tax shall be construed as references to super-tax.

B.— Incomes forming part of income on which no super-tax is payable

99. Incomes not chargeable to super-tax.—(1) Super-tax shall not be payable by an assessee in respect of the following amounts which are included in his total income-

(*i*) if the assessee is a partner of an unregistered firm, any portion of the assessee's share in the profits and gains of the firm computed in the manner laid down in section 67 on which super-tax has already been paid by the firm,

(*ii*) if the assessee is a member of an association of persons or any other body of individuals, any portion of the amount which he is entitled to receive from the association or body, on which super-tax has already been paidby the association or body, as the case may be;

(*iii*) any dividends received by the assessee from a co-operative society as a member thereof;

(*iv*) if the assessee is a company, any dividend received by it from an Indian company, subject to the provisions contained in the Fifth Schedule.

(*v*) where the assessee is a co-operative society, any income in respect whereof no income-tax is payable by it by virtue of the privisions of section 81.

(2) Super-tax shall not be payable by an assessee which is an authority consituted under any law for the time being in force for the marketing of commodities on any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

C.—Rebate of super-tax

100. Donations for charitable purposes.—(1) Where under the Provisions of section 88, an assessee is entitled to a deduction of income-tax in respect of any sum paid as donation, he shall also be entitled, subject to the provisions of sub-section (4) of that section, to a deduction,

from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on such sum.

(2) The provisions of this section do not apply to a company.

101. Newly established industrial undertakings or hotels.—(1) The assessee shall be entitled to a deduction from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax, calculated at the average rate of super-tax, on profits or gains derived from an industrial undertaking or hotel in cases where and to the extent to which income-tax in not payable on such profits or gains under section 84.

(2) Subject to any rules that may be made by the Board in this behalf, a shareholder shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax, on so much of any dividend paid or deemed to be paid to him by an industrial undertaking or hotel as is attributable to that part of the profits or gains on which it is entitled to a deduction of super-tax under this section.

102. Share from registered firm.—Where the assessee is a partner of a registered firm, he shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax following sum, that is to say—

the amount which represents the difference between—

(*i*) the assessee's share in the total income of the firm, and

(*ii*) his share in the total income of the firm as reduced by the income-tax, if any, payable by the firm, at the rate of income-tax applicable to its total income, on the amount of its income from all sources other than from any business carried on by it,

the shares in either case being computed in the manner laid down in section 67.

103. Relief for salary, etc., received in arrear, etc.—The provisions of section 89 apply in relation to super-tax as they apply in relation to income-tax.

D.—Additional super-tax on undistributed profits

104. Super-tax on undistributed income of certain companies.—(1) Subject to the provisions of sub-section (2) and of sections 105, 106 and 107, where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company within the twelve months immediately following the expiry of that previous year are less than the satutory percentage of the distributable income of the company of that previous year, the Income-tax Officer shall make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment under section 143 or section 144, be liable to pay super-tax at the rate of—

(*a*) fifty per cent in the case of an investment company, and

(*b*) thirty-seven per cent in the case of any other company, on the distributable income as reduced by—

(*i*) the amount of dividends actually distributed; and

(*ii*) any expenditure actually incurred *bona fide* for the purposes of the business, but not deducted in computing the income chargeable under the head "Profits and gains of business or profession" being—

(*a*) a bonus or gratuity paid to an employee,

(*b*) legal charges,

(*c*) any such expenditure asis referred to in clause (*c*) of section 40,

(*d*) any expenditure claimed as a revenue expednditure but not allowed to be deducted as such and not resulting in the creation of an asset or enhancement in the value of an existing asset.

(2) The Inoome-tax Officer shall not make an order under sub-section (1) if he is satisfied—

(*i*) that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared would be unreasonable; or

(*ii*) that the payment of a dividend or a larger dividend than that declared would not have resulted in a benefit to the revenue, or

(*iii*) that at least seventy-five per cent of the share capital of the company is throughout the previous year beneficially held by an institution or fund established in India for a charitable purpose the income from dividend whereof is exempt und ersection 11.

105. Special provisions for certain companies.—(1) No order under section 104 shall be made,—

(*i*) in the case of an investment company which has distributed not less than eighty per cent of its distributable income; or

(*ii*) in the case of any other company whose distributable falls short of the statutory percentage by not more than ten per cent of its distributable income, or

(*iii*) in any case where according to the return made by a company under section 139 it has distributed not less than the statutory percentage of its distributable income; but in the assessment made by Income-tax Officer under section 143 or section 144 a higher total income is arrived at and the difference in the total income does not arise out of the application of the proviso to sub-section (1) of section 145 or sub-section (2) of section 145 or section 144 or the omission by the company to disclose its income fully and truly; or

(*iv*) in the case of a company where a re-assessment is made under the provisions of clause (*b*) of section 147 and the sum distributed as dividends falls short of the statutory percentage of the distributable income determined on the basis of the re-assessment:

unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice, a further distribution of its profits and gains so that the total distribution made is not less than the statutory percentage of the distributable income.

(2) Any further distribution made under sub-section (1) shall not be taken into account in deciding whether the provisions of section 104 apply in respect of the previous year in which the further distribution is made.

106. Period of limitation for making orders under section 104.—No order under section 104 shall be made after the expiry of four years from the end of the assessment year relevant to the previous year referred to in sub-section (1) of that section or after the expiry of one year from the end of the financial year in which the assessment or re-assessment of the profits and gains of the previous year aforesaid is made, whichever is later.

107. Approval of Inspecting Assistant Commissioner for orders under section 104.—No order shall be made by the Income-tax Officer under section 104 unless the previous approval of the Inspecting Assistant Commissioner has been obtained, and the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be made by the Income-tax Officer until he has given the company concerned an opportunity of being heard.

108. Savings for company in which public are substantially interested.—Noting contained in section 104 shall apply—

(*a*) to any compay in which the public are susbstantially interested; or

(*b*) to a subsidiary comapny of such company in the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

109. "Distributable income", "Investment company" and "statutory percentage" defined.—For the purposes of sections 104 and 105,—

(*i*) "distributable income" means he total income of a company as reduced by—

(*a*) the amount of income-tax and super-tax payable by the company in respect of its total income, but excluding the amount of any super-tax payable under section 104;

(*b*) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

(*c*) any sum in respect of which a deduction of income-tax is allowed under the provisions of section 88;

(*d*) losses under the head "Capital gains";

(*e*) income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India:

Provided that, when the prohibition or restriction is

subsequently removed, any reduction allowed under this provision shall be deemed to be a part of the distributable income of the previous year in which the prohibition or restriction is removed;

(*f*) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companyies Act, 1949, (10 of 1949).

(*ii*) "investment company" means a company whose business consists wholly or mainly in the dealing in or holding of investments,

(*iii*) "statutory percentage" means,—

(1) in the case of an investment company.....90%

(2) in the case of an Indian company whose business consists wholly in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power.... . ... 50%

(3) in the case of an Indian company, a part only of whose business consists in any of the activities specified in the preceding clause—

(*a*) in relation to the said part of the company's business ....50%.

(*b*) in relation to the remaning part of the company's business—

(1) if it a company which satisfies the conditions specified in sub-clause (*a*) of clause (4).....90 %.

(2) in any other case,. . ...65%.

the said percentages being applied separately with reference to the amounts of profits and gains attributable to the two parts of the company's business aforesaid as if the said amounts were respectively the total income of company in relation to each of its parts, the amount of dividends and taxes also being similarly apportioned, for the purposes of section 104 and this section;

(4) in the case of any other company not referred to in the preceding clauses,—

(*a*) where the accumulated profits and reserves (including depreciation reserves and any amounts capitalised from the earlier reserves) representing accumulations of past prifits which have not been the subject of an order under section 104 or the corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922) exceed—

either

I. the aggregate of

(*i*) the paid-up capital of the company exclusive of the capital, if any, created out of its profits and gains which have not been the subject of an order under section 104, and

(*ii*) any loan capital which is the property of the shareholders,

or

II. the value of the fixed assets as shown in the books of the company,

whichever of these is greater..... . 90%

(*b*) where sub-clause (*a*) does not apply 65%

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

110. Determination of tax where total income includes income on which no tax is payable.—Where there is included in the total income of an assessee any income on which no income-tax or, as the case may be, no super-tax is payble under the provisions of this Act, the assessee shall be entitled to a deduction—

(*a*) from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable, and

(*b*) from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the supter-tax calculated at the average rate of super-tax on the amount on which no super-tax is payable.

111. Tax on accumulated balance of recognised provident fund.—(1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income, owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax in accordance with the provisions of sub-rule (1) of rule 9 thereof.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 of Part A of the Fourth Schedule becomes payable, super-tax shall be calculated in the manner provided in sub-rule (2) of rule 9 thereof

112. Tax on compensation.—Where the total income of an assessee, not being a company, includes any compensation or other payment which is chargeable as the profits and gains of business or profession in accordance with the provisions of clause (*ii*) of section 28, the tax payable by him on his total income shall be—

(*i*) the income-tax payable on the total income as reduced by the amount of such compensation or other payment and of the capital gains, if any;

(*ii*) the super-tax payable on the total income as reduced by the amount of such compensation or other payament and of capital gains, if any;

(*iii*) the tax on such compensation or other payment equal to the amount which bears to the income-tax and suprer-tax which would have been payable on the total income as reduced by the amount of capital gains, if any, and two-thirds of the amount of such inclusion, the same proportion as the whole amount of such compensation or other payment bears to such reduced total income; and

(*iv*) the tax on capital gains, if any, computed in accordance with the provisions of clause (*b*) of section 114.

113. Tax in the case of non-resident.—(1) Where a person is a non-resident and is not a company, the tax payable by him or on his behalf, on his total income shall be an amount equal to—

(*a*) the income-tax which would be payable on his total income at the maximum rate, *plus*

(*b*) either the super-tax which would be payable on his total income at the rate of nineteen per cent or the super-tax which would be payable on his total income if it were the total income of a resident, whichever is greater.

(2) Notwithstanding anything contained in sub-section (1), where a citizen of India, not resident in India, is in receipt of salary from the Government for rendering service outside India, the tax payable by him on his total income for the assessment years commencing with the assessment year 1960-61 shall be determined with reference to his total world income in the manner specified in sub-section (4).

(3) Any non-resident, other than a company, may, on or before to 30th day of June of the assessment year in which the first becomes assessable as a non-resident, by notice in writing to the Income-tax Officer, declare (such declaration being final and being applicable to all assessments thereafter) that the tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and thereupon, notwithstanding the provisions of sub-section (1), such tax shall be determined in accordance with sub-section (4).

(4) Where under the provisions of sub-section (3) any non-resident has exercised his option to be taxed with reference to his total world income, the tax payable by him or on behalf shall be the tax payable on his total income as if it were the total income of a resident or an amount bearing to the total amount of tax which would have been payable on his total world income had it been his total income the same proportion as the total income bears to the total world income, whichever is greater.

(5) Where any person referred to in sub-section (1) satisfies the Income-tax Officer that was prevented by sufficient cause from making the declaration referred to in sub-section (3) or any similar provision of the Indian Income-tax Act, 1922, (11 of 1922), on the first occasion on which he became assessable as a non-resident under this Act or the said Act, as the case may be, and his failure to make such declaration has not resulted in reducing his liability to tax for any year, the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, allow such person to mak the declaration at any time after the expiry of the period spcified, and such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration), any assessment pending on the date of such declaration and all assessments for sbusequent assessment years.

114. Tax on capital gains in cases of assessees other than companies.—Where the total income of an assessee, not being a company, includes any income chargeable

under the head "Capital gains", the tax payable by him on his total income shall be—

(*a*) the amount of income-tax and super-tax payable on the total income as reduced by the amount of such inclusion and by the amount of compensation or other payment if any referred to in clause (*ii*) of section 28, had the total income so reduced been his total income, *plus*

(*b*) the tax on the whole amount of such inclusion equal to the amount which bears to the income-tax which would have been payable on the total income as reduced by two-thirds of such inclusion and by the amount of compensation or other payment aforesaid, if any the same proportion as the whole amount of such inclusion bears to such reduced total income

Provided that—

(*i*) where the total income does not exceed the sum of ten thousand rupees, the amount payable under clause (*b*) shall be *nil*; and

(*ii*) in no case shall the amount payable under clause (*b*) exceed one-half of the amount, if any, by which the income chargeable under the head "Capital gains", exceeds the sum of five thousand rupees.

Plus

(*c*) the tax on such compensation or other payment aforesaid, if any, computed in accordance with the provisions of clause (*iii*) of section 112.

115. Tax on capital gains in case of companies.—Where the total income of a company includes any income chargeable under the head "Capital gains", the tax payable by it shall be—

(*a*) the amount of income-tax with which it is chargeable on its total income, *plus*

(*b*) the amount of super-tax equal to the aggregate of the tax calculated at the rate of ten per cent on the amount of capital gains which is included and at the rate applicable to the company on its total income as reduced by the amount of the cpapital gains, had such reduced income been its total income.

CHAPTER XIII

INCOME-TAX AUTHORITIES

A.—Appointment and control

116. Income-tax authorities.—There shall be the following classes of Income-tax authorities for the purposes of this Act, namely—

(*a*) the Central Board of Revenue,

(*b*) Directors of Inspection,

(*c*) Commissioners of Income-tax,

(*d*) Assistant Commissioners of Income-tax, who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,

(*e*) Income-tax Officers, and

(*f*) Inspectors of Income-tax.

117. Appointment of Income-tax authorities.—(1) The Central Government may appoint as many Directors of Inspection, Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I Service, as it thinks fit.

(2) The Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II Service and as many Inspectors of Income-tax as may be sanctioned by the Central Government.

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an Income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

118. Control of income-tax authorities.—(1) Inspecting Assistant Commissioners shall be subordinate to the Commissioner within whose jurisdiction they perform their functions, and also to the Director of Inspection.

(2) Income-tax Officers shall be subordinate to the Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(3) Inspectors of Income-tax shall be subordinate to the Income-tax Officer or other Income-tax authority under whom they are appointed to work and to any other Income-tax authority to whom the said officer or other authority in is subordinate.

Explanation.—For the purposes of sub-section (1), "Director of Inspection", does not include a Deputy Director of Inspection or an Assistant Director of Inspection; and for the purposes of sub-section (2), "Director of Inspection" does not include an Assistant Director of Inspection.

119. F.R Instructions to subordinate authorities.—(1) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(2) Every Income-tax Officer employed in the execution of this Act shall observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection of by the Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he perform his functions.

B.—Jurisdiction

120. Jurisdiction of Directors of Inspection.—Director of Inspection shall perform such functions of any other Income-tax authority as may be assigned to them by the Board.

121. Jurisdiction of Commissioners.—(1) Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Board may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction, subject to any orders which the Board may make for the distribution and allocation of the work to be performed.

122. Jurisdiction of Appellate Assistant Commissioners.—(1) Appellate Assistant Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of me income as the Board may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more Appellate Assistant Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Board may make for the distribution and allocation of the work to be performed.

123. Jurisdiction of Inspecting Assistant Commissioners.—(1) Inspecting Assistant Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Commissioner may direct.

(2) Where any directions issued under sub-section (1) have assigned two or more Inspecting Assistant Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Commissioner may make for the distribution and allocation of the work to be performed.

124. Jurisdiction of Income-tax Officers.—(1) Income-tax Officers shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Commissioner may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more Income-tax Officers, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Commissioner may make for the distribution and allocation of the work to be performed.

(3) Within the limits of the area assigned to him, the Income-tax Officer shall have jurisdiction—

(*a*) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of this business or profession is situate within the area, and

(*b*) in respect of any other person residing within the

(4) Where a question arises under this section as to whether an Income-tax Officer has jurisdiction to assess any person, the question shall be determined by the Commissioner; or where the question is one relating to areas within the jurisdiction of different Commissioners by the Commissioners concerned or if they are not in agreement, by the Board.

(5) No person shall be entitled to call in question the jurisdiction of an Income-tax Officer—

(*a*) after the expiry of one month from the date on which he has made a return under sub-section (1) of section 139 or after the completion of the assessment, whichever is earlier;

(*b*) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 139 or under section 148 for the making of the return.

(6) Subject to the provisions of sub-section (5), where an assessee calls in question the jurisdiction of an Income-tax Officer, then, the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (4) before assessment is made.

(7) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed.

125. Powers of Commissioner respecting specified cases or persons.—(1) The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act, shall, in respect of any specified case or classes of cases or of any specified persons or classes of persons, be exercised by the Inspecting Assistant Commissioner and the Commissioner respectively.

(2) Where an order under sub-section (1) is issued, then for the purposes of any case or person in respect of which any such order applies, references in this Act or in any rule made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner respectively.

(3) For the purposes of any case or person in respect of which or whom an order under sub-section (1) applies—

(*a*) any provision of this Act requiring an approval or sanction of the Inspecting Assistant Commissioner shall not apply;

(*b*) any appeal which would otherwise have lain to the Appellate Assistant Commissioner shall lie to the Commissioner;

(*c*) any appeal which would have lain from an order of the Appellate Assistant Commissioner to the Appellate Tribunal shall lie from the order of the Commissioner.

126. Powers of Board respecting specified area, classes of persons or incomes.—Notwithstanding anything contained in the foregoing sections, the Board may, by notification in the Official Gazette, empower Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners and Income-tax Officers to perform such functions in respect of such area or of such classes of persons or of such classes of income as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the area or classes of persons or classes of income by the other authorities under section 121, section 122, section 123 or section 124.

127. Transfer of cases from one Income-tax Officer to another.—(1) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one Income-tax Officer subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one Income-tax Officer to another

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Income-tax Officer to another whose offices are situate in the same city, locality or place

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

Explanation.—In this section and in sections 121 and 125, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

128. Functions of Inspectors of Income-tax.—Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other Income-tax authority under whom they are appointed to work

129. Change of incumbent of an office.—Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order of assessment is passed against him, he be re-heard

130. Authority competent to take or continue certain proceedings.—For the purposes of sections 253, 254, 256, 263, and 264 the Commissioner referred to therein shall, in relation to an assessee, be the Commissioner having for the time being jurisdiction over the assessee

C.—Powers

131. Power regarding discovery, production of evidence, etc.—(1) The Income-tax Officer, Appellate Assistant Commissioner and Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—

(*a*) discovery and inspection,

(*b*) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(*c*) compelling the production of books of account and other documents; and

(*d*) issuing commissions.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the Income-tax authority may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVII-D

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Income-tax Officer shall not—

(*a*) impound any books of account or other documents without recording his reasons for so doing, or

(*b*) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

132. Powers of search and seizure.—(1) Subject to any rules made in this behalf, any Income-tax Officer specially

authorised by the Commissioner in this behalf may,—

(*i*) enter and search any building or place where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under this Act, may be found, and examine them, if found;

(*ii*) seize any such books of account or other document,

(*iii*) place marks of identification on any such books of account or other documents or make or cause to be made extracts or copies therefrom;

(*iv*) make a note or an inventory of any articles or things found in the course of any search under this section which in his opinion will be useful for, or relevant to, any proceeding under this Act.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall apply, so far as may be, to searches under this section.

133. Power to call for information.—The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;

(2) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family,

(3) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;

(4) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than four hundred rupees, together with particulars of all such payments made;

(5) require any dealer, broker or agent or any person concerned in the management of a Stock or Commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts;

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, giving information in relation to such points or matters as, in the opinion of the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, will be useful for, or relevant to, any proceeding under this Act.

134. Power to inspect registers of companies.—The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, or any person subordinate to him authorised in writing in this behalf by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, may inspect, and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

135. Power of Director of Inspection, Commissioner and Inspecting Assistant Commissioner.—The Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an Income-tax Officer has under this Act in relation to the making of enquiries.

136. Proceedings before Income-tax authorities to be judicial proceedings.—Any proceeding under this Act before an Income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860).

D.—Disclosure of information

137. Disclosure of information prohibited.—(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made in the course of any proceedings under this Act, other than proceedings under Chapter XXII, or in any record of any assessment proceeding or any proceeding relating to recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof

(2) No public servant shall disclose any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record.

(3) Nothing in this section shall apply to the disclosure—

(*i*) of any such particulars for the purposes of a prosecution for any offence under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution for any offence under this Act; or

(*ii*) of any such particulars to any person acting in the execution of this Act, where it is necessary or desirable to disclose the same to him for the purposes of this Act; or

(*iii*) of any such particulars, where the disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand; or

(*iv*) of any such particulars to a civil court in any suit or proceeding to which the Government or any Income-tax authority is a party, which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any Income-tax authority to exercise any powers thereunder; or

(*v*) of any such particulars to the Comptroller and Auditor-General of India for the purpose of enabling him to discharge his functions under the Constitution; or

(*vi*) of any such particulars to any officer appointed by the Comptroller and Auditor-General of India or the Board to audit income-tax receipts or refunds; or

(*vii*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any person appointed Commissioner under the Public Servants (Inquiries) Act, 1850 (37 of 1850), or to an officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of any such inquiry or to a court in connection with the prosecution arising out of any such inquiry; or

(*viii*) with the previous permission of the Central Government, of any such particulars as may be required by any Commission of Inquiry appointed by the Central Government under the Commissions of Inquiry Act, 1952 (60 of 1952), or by any authority to which the provisions of that Act have been made applicable by the Central Government, for the purpose of any inquiry by such Commission or authority; or

(*ix*) of any such particulars relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a legal practitioner or chartered accountant, to the authority empowered to take disciplinary action against members of the profession to which he belongs; or

(*x*) of any such particulars by any public servant, where the disclosure is occasioned by the lawful exercise by him of his powers under the Indian Stamp Act, 1899 (2 of 1899), to impound an insufficiently stamped document; or

(*xi*) of such facts, to an authorised officer of the Government of any country outside India for the granting of relief in respect of or avoidance of double taxation as may be necessary for the purpose of enabling such relief or a refund under section 90 to be given or such avoidance under that section to be made effective; or

(*xii*) of such facts, to an officer of a State Government authorised in this behalf as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it; or

(*xiii*) of such facts, to an officer of the Central Government authorised in this behalf as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it; or

(*xiv*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878 (8 of 1878), or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers; or

(*xv*) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll; or

(*xvi*) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established; or

(*xvii*) of such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investment and balance of payments; or

(*xviii*) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant or to a court in connection with any prosecution of the public servant arising out of any such investigation; or

(*xix*) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Act, 1950, (31 of 1950) for the purpose of enabling him to discharge the duties imposed upon him by or under the said Act; or

(*xx*) of any such particulars as may be required by any order made under sub-section (2) of section 19 of the Foreign Exchange Regulation Act, 1947 (7 of 1947), or for the purposes of any proceeding or of a prosecution for an offence under section 23 of that Act; or

(*xxi*) of so much of such particulars to any person as is evidence of the fact that any property does not belong to the assessee but belongs to such person

Provided that the assessee had, prior to such disclosure, been examined by the Income-tax Officer in respect of his right to such property.

(4) Nothing in this section shall apply to the production by a public servant before a court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 171 or sections 184 to 186 or to the giving of evidence by a public servant in respect thereof

(5) Nothing in this section shall be construed as prohibiting the voluntary disclosure of any particulars referred to in sub-section (1) by the person by whom the statement was made, the return furnished, the accounts or or documents produced, the evidence given or the affidavit or deposition made, as the case may be.

Explanation.—In sub-sections (1), (2) and (4), "public servant" means any public servant employed in the execution of this Act.

138. Disclosure of information respecting tax payable.—Where a person makes an application to the Commissioner in the prescribed form and pays the prescribed fee for information as to the amount of tax determined as payable by any assessee in respect of any assessment made either under this Act or the Indian Income-tax Act, 1922 (11 of 1922), on or after the 1st day of April, 1960, the Commissioner may, notwithstanding anything contained in section 137, if he is satisfied that there are no circumstances justifying its refusal, furnish or cause to be furnished the information asked for.

CHAPTER XIV

Procedure for Assessment

139. Return of income.—(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed—

(*a*) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of six months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later;

(*b*) in the case of every other person, before the 30th day of June of the assessment year

Provided that, on an application made in the prescribed manner, the Income-tax Officer, may, in his discretion extend the date for furnishing the return

(*i*) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired on or before the 31st day of December of the year immediately preceding the assessment year, and in the case of any person referred to in clause (*b*), up to a period not extending beyond the 30th day of September of the assessment year without charging any interest,

(*ii*) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired after the 31st day of December of the year immediately preceding the assessment year, up to the 31st day of December of the assessment year without charging any interest; and

(*iii*) up to any period falling beyond the dates mentioned in clauses (*i*) and (*ii*), in which case, interest at six per cent per annum shall be payable from the 1st day of October or the 1st day of January, as the case may be, of the assessment year to the date of the furnishing of the return—

(*a*) in the case of a registered firm or an unregistered firm which has been assessed under clause (*b*) of section 183, on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm: and

(*b*) in any other case, on the amount of tax payable on the total income as finally assessed, reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be

(2) In the case of any person who, in the Income-tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided that on an application made in the prescribed manner the Income-tax Officer may, in his discretion, extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September or, as the case may be, the 31st day of December of the assessment year, the provisions of sub-clause (*iii*) of the proviso to sub-section (1) shall apply.

(3) If any person who has not been served with a notice under sub-section (2), has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72 or sub-section (2) of section 73, or sub-section (1) of section 74, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(4) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may before the assessment is made furnish the return for any previous year at any time before the end of four assessment years from the end of the assessment year to which the return relates, and the provisions of sub-clause (*iii*) of the proviso to sub-section (1) shall apply in every such case.

(5) If any person having furnished a return under sub-section (1) or sub-section (2), discovers any omissions or

any wrong statement therein, he may furnish a revised return at any time before the assessment is made.

(6) The prescribed form of the returns referred to in sub-sections (1), (2) and (3) shall, in the case of an assessee engaged in business or profession, require him to furnish particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and if he is a member of an association or body of individuals the names of the other members of the association or the body and the extent of the share of the assessee and the shares of all such partners or the members, as the case may be, in the profits of the business or profession and any branches thereof.

(7) No return under sub-section (1) need be furnished by any person for any previous year if he has already furnished a return of income for such year in accordance with the provisions of sub-section (2).

140. Return by whom to be signed.—The return under section 139 shall be signed and verified—

(*a*) in the case of an invidividual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(*b*) in the case of a Hindu undivided family, by the Karta, and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family,

(*c*) in the case of a company or local authority, by the principal officer thereof;

(*d*) in the case of a firm, by any partner thereof, not being a minor;

(*e*) in the case of any other association, by any member of the association or the principal officer thereof; and

(*f*) in the case of any other person, by that person or by some person competent to act on his behalf.

141. Provisional assessment.—(1) The Income-tax Officer may, at any time after the receipt of a return made under section 139, proceed to make, in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it.

(2) In making any assessment under this section due effect shall be given to—

(*a*) the allowance referred to in sub-section (2) of section 32, and

(*b*) any loss carried forward under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) of section 74.

(3) A partner of a firm may be assessed under sub-section (1) in respect of his share in the income of the firm, if its return has been received, even if the return of the partner himself has not been received.

(4) A firm may be assessed under sub-section (1) as an un-registered firm, except in the following cases, where it shall be assessed as a registered firm—

(*a*) where the firm was assessed as a registerd firm for the latest assessment year for which its assessement has been completed, and it has before the expiry of the period laid down in Chapter XVI-B filed its application for registration or declaration under sub-section (7) of section 184 for the assessment year for which the provisional assessment is to be made;

(*b*) where no regular assessment has been made on the firm for any assessment year preceding the assessment year for which the provisional assessment is to be made, and the firm has, before the expiry of the period laid down in Chapter XVI-B filed its application for registration, or declaration as aforesaid, for the assessment year for which the provisional assessment is to be made.

(5) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(6) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination, on the merits of any issue which may arise in the course of the regular assessment.

(7) There shall be no right of appeal against a provisional assessment made under sub-section (1).

142. Enquiry before assessment.—(1) For the purpose of making an assessment under this Act, the Income-tax Officer may serve on any person who has made a return under section 139 or upon whome a notice has been served under sub-section (2) of section 139 (whether a return has been made or not) a notice requiring him, on a date to be therein specified,—

(*i*) to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require or

(*ii*) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee whether included in the accounts or not) as the Income-tax Officer may require:

Provided that—

(*a*) the previous approval of the Inspecting Assistant Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;

(*b*) the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(2) For the purpose of obtaining full information in respect of the income or loss of any person, the Income-tax Officer may make such enquiry as he considers necessary.

(3) The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any enquiry under sub-section (2) and proposed to be utilised for the purpose of the assessment.

143. Assessment.—(1) Where a return has been made under section 139 and the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee, and shall determine the sum payable by him or refundable to him on the basis of such return.

(2) Where a return has been made under section 139 but the Income-tax Officer is not satisfied without requiring the presence of the assessee or the production of evidence that the return is correct and complete, he shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce or to cause to be there produced, any evidence on which the assessee may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as the assessee may produce and such other evidence as the Income-tax Officer may require on specified points, and after taking into account all relevant material which the Income-tax Officer has gathered, shall, by an order in writing, assess the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment.

144. Best judgment assessment.—If any person—

(*a*) fails to make the return required by any notice given under sub-section(2) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

(*b*) fails to comply with all the terms of a notice issued under sub-section (1) of section 142, or

(*c*) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143.

the Income-tax Officer, after taking into account all relevant material which the Income-tax Officer has gathered, shall make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

145. Method of accounting.—(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be

computed in accordance with the method of accounting regularly employed by the assessee;

Provided that in any case where the accounts are correct and complete to the satisfaction of the Income-tax Officer but the method employed is such that, in the opinion of the Income-tax Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

(2) Where the Income-tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income-tax Officer may make an assessment in the manner provided in section 144.

146. Re-opening of assessment at the instance of the assessee.—Where an assessee assessed under section 144 makes an application to the Income-tax Officer, within one month from the date of service of a notice of demand issued in consequence of the assessment for the cancellation of the assessment on the ground—

(*i*) that he was prevented by sufficient cause from making the return required under sub-section (2) of section 139, or

(*ii*) that he did not receive the notice issued under sub-section (1) of section 142 or sub-section (2) of section 143, or

(*iii*) that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of any notice referred to in clause (*ii*),

the Income-tax Officer shall, if satisfied about the existence of such ground, cancel the assessment and proceed to makea fresh assessment in accordance with the provisions of section 143 or 144.

147. Income escaping assessment.—If—

(*a*) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(*b*) notwithstanding that there has been no omission or failure as mentioned in clause (*a*) on the part of the assessee the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of sections 148 to 153 assess or reassess such income or recompute the loss or the depreciation allowance, as the case may, be for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(*a*) where income chargeable to tax has been under-assessed, or

(*b*) where such income has been assessed at too low a rate, or

(*c*) where such income has been made the subject of excessive relief under this Act or under the Indian Income-tax Act, 1922, (11 of 1922), or

(*d*) where excessive loss or depreciation allowance has been computed.

Explanation 2.—Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

148. Issue of notice where income has escaped assessment.—(1) Before making the assessment, reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice where a notice issued under that sub-section.

(2) The Income-tax Officer shall, before issuing any notice under this section, record his reasons for doing so

149. Time limit for notice.—(1) No notice under section 148 shall be issued;

(*a*) in cases falling under clause (*a*) of section 147—

(*i*) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under sub-clause (*ii*);

(*ii*) for the relevant assessment year, where eight years, but not more than sixteen years, have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(*b*) in cases falling under clause (*b*) of section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

150. Provision for cases where assessment is in pursuance of an order on appeal, etc.—(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

151. Sanction for issue of notice.—(1) No notice shall be issued under section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

(2) No notice shall be issued under section 148 after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the reasons recorced by the Income-tax Officer that it is a fit case for the issue of such notice.

152. Other provisions.—(1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

(2) Where an assessment is reopened in circumstances falling under clause (*b*) of section 147, the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264, claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made:

Provided that in so doing he shall not be entitled to re-open matters concluded by an order under section 154, 155, 260, 262 or 263.

153. Time limit for completion of assessments and reassessments.—(1) No order of assessment shall be made under section 143 or section 144 at any time after—

(*a*) the expiry of four years from the end of the assessment year in which the income was first assessable; or

(*b*) the expiry of eight years from the end of the assessment year in which the income was first assessable, in a case falling within clause (*c*) of sub-section (1) of section 271; or

(*c*) the expiry of one year from the date of the filing of a return or a revised return under sub-section (4) or sub-section (5) of section 139;

whichever is latest.

(2) No order of assessment, reassessment or recomputation shall be made under section 147—

(*a*) where the assessment, reassessment or recomputa-

tion is to be made under clause (*a*) of that section after the expiry of four years from the end of the assessment year in which the notice under section 148 was served,

(*b*) where the assessment, reassessment or recomputation is to be made under clause (*b*) of that section, after—

(*i*) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(*ii*) the expiry of one year from the date of service of the notice under section 148,

whichever is later.

(3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may be completed at any time—

(*i*) where a fresh assessment is made under section 146,

(*ii*) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264;

(*iii*) where in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

Explanation 1.—In computing the period of limitation for the purposes of this section, the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under the proviso to section 129 or any period during which the assessment proceeding is stayed by an order or injunction of any court, shall be excluded.

Explanation 2.—Where, by an order under section 250, 254, 260, 262, 263 or 264, any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 3.—Where, by an order under section 250, 254, 260, 262, 263 or 264, any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.

154. Rectification of mistake.—(1) With a view to rectifying any mistake apparent from the record—

(*a*) the Income-tax Officer may amend any order of assessment or of refund or any other order passed by him,

(*b*) the Appellate Assistant Commissioner may amend any order passed by him in appeal under section 250;

(*c*) the Commissioner may amend any order passed by him in revision under section 263 or section 264.

(2) Subject to the other provisions of this section, the authority concerned—

(*a*) may make an amendment under sub-section (1) of its own motion, and

(*b*) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Appellate Assistant Commissioner, by the Income-tax Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the Income-tax authority concerned.

(5) Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the date of the order sought to be amended.

155. Other amendments.—(1) Where in respect of any completed assessment of a partner in a firm it is found—

(*a*) on the assessment or reassessment of the firm, or

(*b*) on any reduction or enhancement made in the income of the firm under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264,

that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included is not correct, the Income-tax Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the firm.

(2) Where in respect of any completed assessment of a member of an association of persons or of a body of individuals it is found—

(*a*) on the assessment or reassessment of the association or body, or

(*b*) on any reduction or enhancement made in the income of the association or body under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264,

that the share of the member in the income of the association or body, as the case may be, has not been included in the assessment of the member or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the association or body, as the case may be.

(3) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or any other proceeding, or where any excess profits tax has been assessed after the completion of the corresponding assessment for income-tax and in consequence thereof, it is necessary to amend the total income of the assessee chargeable to income-tax, the Income-tax Officer may make the necessary amendment and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order making or modifying the assessment of such excess profits tax or business profits tax, as the case may be.

Explanation.—For the purposes of this sub-section, where the assessee is a firm, the provisions of sub-section (1) shall also apply as they apply to the amendment of the assessment of the partners of the firm.

(4) Where as a result of proceedings initiated under section 147, a loss or depreciation has been recomputed and in consequence thereof it is necessary to recompute the total income of the assessee for the succeeding year or years to which the loss or depreciation allowance has been carried forward and set off under the provisions of sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) of section 74, the Income-tax Officer may proceed to recompute the total income in respect of such year or years and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order passed under section 147.

(5) Where an allowance by way of development rebate has been made wholy or partly to an assessee in respect of a ship, machinery or plant installed after the 31st day of December, 1957, in any assessment year under section 33 or under the corresponding provisions of the Indian Income Tax Act, 1922 (11 of 1922), and subsequently—

(*i*) at any time before the expiry of eight years from the end of the previous year in which the ship was acquired

or the machinery or plant was installed, the ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or in connection with any amalgamation or succession referred to in sub-section (3) or sub-section (4) of section 33; or

(*ii*) at any time before the expiry of the eight years referred to in sub-section (3) of section 34, the assessee utilises the amount credited to the reserve account under clause (*a*) of that sub-section—

(*a*) for distribution by way of dividends or profits; or

(*b*) for remittance outside India as profits or for the creation of any asset outside India; or

(*c*) for any other purpose which is not a purpose of the business of the undertaking;

the development rebate originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the sale or transfer took place or the money was so utilised

(6) Where any such debt or part of debt as is referred to in clause (*vii*) of sub-section (1) of section 36 is written off as irrecoverable in the accounts of the assessee for a previous year and the Income-tax Officer is satisfied that such debt or part thereof became a bad debt in an earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which the debt or part is written off, the Income-tax Officer may, notwithstanding anything contained in this Act, allow such debt or part as a deduction for such earlier previous year, if the assessee accepts such a finding of the Income-tax Officer, and recompute the total income of the assessee for such earlier previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment relating to the previous year in which the debt is written off is made.

(7) Where as a result of any proceeding under this Act, in the assessment for any year of a company in whose case an order under section 104 has been made for that year, it is necessary to recompute the distributable income of that company, the Income-tax Officer may proceed to recompute the distributable income and determine the super-tax payable on the basis of such recomputation and make the necessary amendment, and the provisions of section 154 shall so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the company in respect of that proceeding.

(8) Where in the assessment for any year a capital gain arising from the transfer of any such capital asset as is referred to in section 54 is charged to tax and within a period of one year after the date of the transfer the assessee purchases, or within two years from that date constructs, a house property for the purpose of his own residence, the Income-tax Officer shall amend the order of assessment so as to exclude the amount of the capital gain not chargeable to tax under the provisions of section 54, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the assessment.

156. Notice of demand.—When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Income-tax officer shall serve the assessee a notice of demand in the prescribed form specifying the sum so payable

157. Intimation of loss.—When, in the course of the assessment of the total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set off under the provisions of sub-section (1) of section 72, sub-section (2) of section 73 or sub-section (1) of section 74, the Income-tax Officer shall notify to the assessee by an order in writing the amount of the loss as computed by him for the purposes of sub-section (1) of section 72, sub-section (2) of section 73 or sub-section (1) of section 74.

158. Intimation of assessment of firm. -Whenever a registered firm is assessed, or an unregistered firm is assessed under the provisions of clause (*b*) of section 183, the Income-tax Officer shall notify to the firm by an order in writing the amount of its total income assessed and the apportionment thereof between the several partners

CHAPTER XV

LIABILITY IN SPECIAL CASES

A —Legal representatives

159. Legal representatives.—(1) Where a person dies, his legal respresentative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative any may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative, and

(*c*) all the provisions of this Act shall apply accordingly

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representativeif, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with may assets of the estate of the deceased, which are in, or may come into his possession but such liability shall be limited to the value of the asset so charged, disposed of or parted with

(5) The provisions of sub-section (2) of section 161, section 162 and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability

B —Representative assessee—general provisions

160. Representative assessee.—(1) For the purposes of this Act, "representative assessee" means—

(*i*) in respect of the income of a non-resident specified in clause (*i*) of sub-section (1) of section 9 the agent of the non-resident, including a person who is treated as an agent under section 163;

(*ii*) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot.

(*iii*) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(*iv*) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) (6 of 1913) receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

161. Liability of representative assessee.—(1) Every representative assessee, as regards the income in respect

of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter be levies upon and recovered from him in like manner and to the same extent as it would be liable upon and recoverable from the person represented by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not in respect of that income, be assessed under any other provision of this Act.

162. Right of representative assessee to recover tax paid.—(1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained such representative assessee or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal

C.—Representative assessee—special cases

163. Who may be regarded as agent.—(1) For the purposes of this Act, "agent", in relation to a non-resident, includes any person in India—

(*a*) who is employed by or on behalf of the non-resident; or

(*b*) who has any business connection with the non-resident; or

(*c*) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(*d*) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India:

Provided that a broker in India who in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:—

(*i*) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(*ii*) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

(2) No person shall be treated as the agent of a non-resident unless he had had an opportunity of being heard by the Income-tax Officer as to his liability to be treated as such.

164. Charge of tax where share of beneficiaries unknown.—Where any income in respect of which the persons mentioned in clauses (*iii*) and (*iv*) of sub-section (1) of section 160, are liable as representative assessees or any part thereof, is not specifically receivable on behalf or for the benefit of any one person, or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable (which persons are hereinafter in this section referred to as the beneficiaries) are indeterminate or unknown, tax shall be charged as if such income or such part thereof were the total income of an association of persons, or, where such income or such part thereof is actually received by a beneficiary, then at the rate or rates applicable to the total income or total world income of the beneficiary if such course would result in a benefit to the revenue.

165. Case where part of trust income is chargeable. Where part only of the income of a trust is chargeable under this Act, that proportion only of the income receivable by a beneficiary from the trust which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part.

D.—Representative assessees—miscellaneous provisions

166. Direct assessment or recovery not barred.—Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

167. Remedies against porperty in cases of representative assessees.—The Income-tax Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

E.—Executors

168.—Executors.—(1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

(*a*) if there is only one executor, then, as if the executor were an individual; or

(*b*) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution, to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, "executor" includes an administrator or other person administering the estate of a deceased person.

169. Right of executor to recover tax paid.—The provisions of section 162 shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him as they apply in the case of a representative assessee

F.—Succession to business or profession

170. Succession to business otherwise than on death.—(1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

(*a*) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(*b*) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assess-

ment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall so far as may be, apply accordingly

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the Income-tax Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

G.—Partition

171. Assessment after partition of a Hindu undivided family.—(1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where at the time of making an assessment under section 143 or section 144, it is claimed by on behalf of any member of a Hindu family assessed as undivided that a partition whether total or partial, has taken place among the members of such family, the Income-tax Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Income-tax Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section, and the partition took place during the previous year,—

(*a*) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and

(*b*) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (2) of section 10, be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of clause (*b*) of sub-section (4) shall, so far as may be, apply to the case.

(6) Notwithstanding anything contained in this section, if the Income-tax Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the Income-tax Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period

Explanation.—In this section,—

(*a*) "partition" means—

(*i*) Where the property admits of a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(*ii*) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be to a partition,

(*b*) "partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

H.—Profits of non-residents from occasional shipping business

172. Shipping business of non-residents.—(1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers live-stock, mail or goods shipped at a port in India, unless the Income-tax Officer is satisfied that there is an agent of the non-resident from whom the tax will be recoverable under the other provisions of this Act.

(2) Where such a ship carries passengers, live-stock, mail or goods shipped at a port in India, one-sixth of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

(3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, live-stock, mail or goods shipped at that port since the last arrival of the ship thereat

Provided that where the Income-tax Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the Income-tax Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the Income-tax Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates for the time being applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.

(5) For the purpose of determining the tax payable under sub-section (4), the Income-tax Officer may call for such accounts or documents as he may require.

(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or chartrer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, live-stock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax leviable for that assessment year, and the differ-

ence between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

I.—Recovery of tax in respect of non-residents

173. Recovery of tax in respect of non-resident from his assets.—Without prejudice to the provisions of sub-section (1) of section 161 or of section 167, where the person entitled to the income referred to in clause (*i*) of sub-section (1) of section 9 is a non-resident, the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee may be recovered by deduction under any of the provisions of Chapter XVII-B and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident which are, or may at any time come, within India.

J.—Persons leaving India

174. Assessment of persons leaving India.—(1) Notwithstanding anything contained in section 4, when it appears to the Income-tax Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to a tax in that assessment year

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) The Income-tax Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 139, setting forth his total income for each completed previous year comprised in the period referred to in sub-section (1) and his estimated total income for any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under sub-section (2) of section 139.

(5) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the Income-tax Officer under sub-section (2) of section 139 or sub-section (1) of section 148 in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in sub-section (2) of section 139 or sub-section (1) of section 148 as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the Income-tax Officer may think proper.

K.—Persons trying to alienate their assets

175. Assessment of persons likely to transfer property to avoid tax.—Notwithstanding anything contained in section 4, if it appears to the Income-tax Officer during any courrent assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the Income-tax Officer commences proceedings under this section shall be chargeable to tax in that assessement year, and the provisions of sub-sections (2), (3), (4), (5) and (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India

L.—Discontinuance of business or dissolution

176. Discontinued business.— (1) Notwithstanding anything contained in section 4, where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinuance may, at the discretion of the Income-tax Officer, be charged to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) Any person discontinuing any business or profession shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof.

(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

(5) Where an assessment is to be made under the rovisions of this section, the Income-tax Officer may serve on the person whose income is to be assessed or in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139 and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under sub-section (2) of section 139.

(6) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(7) Where the provisions of sub-section (1) are applicable, any notice issued by the Income-tax Officer under sub-section (2) of section 139 or sub-section (1) of section 148 in respect of any tax chargeable under any other provisions of this Act, may, notwithstanding anything contained in sub-section (2) of section 139 or sub-section (1) of section 148, as the case may be, require the furnishing of the return by the person to whom the aforesaid notices are issued within such period, not being less than seven days, as the Income-tax Officer may think proper.

177. Association dissolved or business discontinued. - (1) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the Income-tax Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any oer sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section if the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceeding under this Act in respect of any such association of persons as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment

year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act, shall, so far as may be, apply accordingly

(5) Noting in this section shall affect the provisions of sub-section (6) of section 159

178. Company in liquidation.—(1) Every person—

(*a*) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(*b*) who has been appointed the receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) On being notified by the Income-tax Officer under sub-section (2), the liquidator shall set aside an amount equal to the amount so notified and until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hands except for the purpose aforesaid or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation

(4) The liquidator shall, if he has not set aside the amount notified under sub-section (2), be personally liable to the extent of that amount for the payment of the tax on behalf of the company.

(5) Where there are more liquidators than one, the obligations and liablities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force

M.—Private company in liquidation

179. Liability of directors of private company in liquidation.—Notwithstanding anything contained in the Companies Act, 1956, (1 of 1956), when any private comapny is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery can not be be attributed to any gross neglect misfeasance or breach of duty on his part in relation to the affairs of the company.

N —Special provisions for certain kinds of income

180. Royalties or copyright fees for literary or artistic work.—Where the time taken by the author of a literary or artistic work in the making thereof is more than twelve months, the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment in such manner and to such period as may be prescribed.

Explanation.—For the purposes of this section, the expression "author" includes a joint author, and the expression "lump sum", in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

O. –Liability of State Governments

181. Interest on tax free securities of a State Government. - Income-tax shall be payable by a State Government on the interest on any security issued by it tax free

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

A.—Assessment of firms

182. Assessment of registered firms. (1) Notwithstanding anything contained in section 143 and 144 and subject to the provisions of sub-section (3), in the case of a registered firm, after assessing the total income of the firm,—

(*i*) the income-tax payable by the firm itself shall be determined; and

(*ii*) the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly.

(2) If such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of sections 70 to 75

(3) When any of the partners of a registered firm is a non-resident, the tax, on his share in the income of the firm shall be assessed on the firm at the rate or rates which would be applicable if it were assessed on him personally and the tax so assessed shall be paid by the firm.

(4) A registered firm may retain out of the share of each partner in the income of the firm a sum not exceeding thirty per cent thereof until such time as the tax which may be levied on the partner in respect of that share is paid by him, and where the tax so levied cannot be recovered from the partner, whether wholly or in part, the firm shall be liable to pay the tax, to the extent of the amount retained or could have been so retained

183. Assessment of unregistered firms.—In the case of an unregistered firm, the Income-tax Officer—

(*a*) may determine the tax payable by the firm itself on the basis of the total income of the firm; or

(*b*) if, in his opinion, the aggregate amount of the tax payable by the partners if the firm were treated as a registered firm would be greater than the aggregate amount of the tax which would be payable by the firm under clause (*a*) and the tax which would be payable by the partners individually, may proceed to make the assessment under clause (*ii*) of sub-section (1) of section 182 as if the firm were a registered firm, and where the procedure specified in this clause is applied to any unregistered firm, the provisions of sub-sections (2), (3) and (4) of section 182 shall apply thereto as they apply in the case of a registered firm.

B —Registration of firms

184. Application for registration.—(1) An application for registration of a firm for the purposes of this Act may be made to the Income-tax Officer on behalf of any firm if—

(*i*) the partnership is evidenced by an instrument, and

(*ii*) the individual shares of the partners are specified in that instrument.

(2) Such application may, subject to the provisions of this section be made either during the existence of the firm or after its dissolution.

(3) The application shall be made to the Income-tax Officer having jurisdiction to assess the firm, and shall be signed—

(*a*) by all the partners (not being minors) personally, or

(*b*) in the case of a dissolved firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

Explanation.—In the case of any partner who is absent from India or is a lunatic or an idiot, the application may be signed by any person duly authorised by him in this behalf, or as the case may be, by a person entitled under law to represent him.

(4) The application shall be made before the end of the previous year for the assessment year in respect of which

registration is sought:

Provided that the Income-tax Officer may entertain an application made after the end of the previous year, if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year.

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof:

Provided that if the Income-tax Officer is satisfied that for sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners (not being minors) or, where the application is made after the dissolution of the firm, by all the persons referred to in cause (*b*) of sub-section (3), to be a correct copy or a certified copy of the instrument; and in such cases the application shall be accompanied by a duplicate copy of the original instrument.

(6) The application shall be made in the prescribed form and shall contain the prescribed particulars.

(7) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year:

Provided that—

(*i*) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted; and

(*ii*) the firm furnishes along with its return of income for the assessment year concerned a declaration to that effect in the prescribed form and verified in the prescribed manner

(8) Where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section.

185. Procedure on receipt of application.—(1) On receipt of an application for the registration of a firm, the Income-tax Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and—

(*a*) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year,

(*b*) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

(2) The Income-tax Officer shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation.

(3) If the defect is not rectified within such time, the Income-tax Officer may reject the application.

(4) Where a firm is registered for any assessment year, the Income-tax Officer shall record a certificate on the instrument of partnership or on the certified copy submitted in lieu of the original instrument, as the case may be, to the effect that the firm has been registered under this Act, for that assessment year; and where a declaration under sub-section (7) of section 184 is furnished by the firm, for the relevant subsequent assessment year.

(5) Notwithstanding anything contained in this section, where, in respect of any assessment year, there is, on the part of a firm, any such failure as is mentioned in section 144, the Income-tax Officer may refuse to register the firm for the assessment year.

186. Cancellation of registration.—(1) If, where a firm has been registered, its registration has effect under sub-section (7) of section 184 for an assessment year, the Income-tax Officer is of opinion that there was during the previous year no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard and with the previous approval of the Inspecting Assistant Commissioner, cancel the registration of the firm for that assessment year:

Provided that no such cancellation shall be made after the expiry of eight years from the end of the assessment year in respect of which registration has been granted or has effect.

(2) If, where a firm has been registered or its registration has effect under sub-section (7) of section 184 for any assessment year, there is, on the part of the firm, any such failure in respect of the assessment year as is mentioned in section 144, the Income-tax Officer may cancel the registration of the firm for the assessment year, after giving the firm not less than fourteen days' notice intimating his intention to cancel its registration and after giving a reasonable opportunity of being heard.

(3) Where the registration of a firm is cancelled for any assessment year, the Income-tax Officer shall amend the assessments of the firm and its partners for that assessment year on the footing that the firm is an unregistered firm.

(4) The provisions of section 154 shall, so far as may be, apply to the amendments of the assessments of the firm and its partners under sub-section (3) of this section the period of four years specified in sub-section (7) of, that section being reckoned from the date of the order cancelling the registration.

C.—Changes in constitution, succession and dissolution

187. Change in constitution of a firm.—(1) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment

Provided that—

(*i*) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same; and

(*ii*) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment

(2) For the purposes of this section, there is a change in the constitution of the firm—

(*a*) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or

(*b*) where all the partners continue with a change in their respective shares or in the shares of some of them.

188. Succession of one firm by another firm.—Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 170.

189. Firm dissolved or business discontinued.—(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Income-tax Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of

such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

CHAPTER XVII

COLLECTION AND RECOVERY OF TAX

A.—General

190. Deduction at source and advance payment.—(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter.

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.

191. Direct payment.—(1) In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.

(2) Save as provided in this Chapter, super-tax shall be payable by the assessee direct.

B.—Deduction at source

192. Salary.—(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax and super-tax on the amount payable at the average rate of income-tax and average rate of super-tax respectively computed on the basis of the rates of tax in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.

(2) Any person responsible for paying any income chargeable under the head "Salaries" to a non-resident, not being a citizen of India in receipt of salary from the Government for rendering service outside India shall, at the time of payment, deduct tax at the rates in force on the estimated income of the assessee under this head for the financial year.

(3) The person responsible for making the payment referred to in sub-section (1) or sub-section (2) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(4) The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 of Part A of the Fourth Schedule applies, at the time an accumulated balance due to an employee is paid, make therefrom the deduction provided in rule 10 of Part A of the Fourth Schedule.

(5) Where any contribution made by an employer, including interest on such contributions, if any, in an approved superannuation fund is paid to the employee, income-tax and super-tax on the amount so paid shall be deducted by the trustees of the fund to the extent provided in rule 6 of Part B of the Fourth Schedule.

(6) For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

Explanation.—In sub-section (2), and in sections 193, 194, 195 and 197, the expression "rates in force" means the rate or rates specified for the purpose of deduction by the Finance Act of the year in which such deduction is required to be made.

193. Interest on securities.—The person responsible for paying any income chargeable under the head "Interest of securities" shall, at the time of payment, deduct income-tax and super-tax at the rates in force on the amount of the interest payable.

194. Dividends.—The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, of any dividend within the meaning of sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) or sub-clause (*d*) or sub-clause (*e*) of clause (22) of section 2, deduct from the amount of such dividend, income-tax and super-tax at the rates in force:

Provided that where in the case of any shareholder, not being a company, the Income-tax Officer gives a certificate in writing in the prescribed manner that to the best of his belief the total income or the total world income of the shareholder will be less than the minimum liable to income-tax , the person responsible for paying any dividend to the shareholder shall so long as the certificate is in force pay the dividend without any deduction.

195. Other sums.—(1) Any person responsible for paying to a non-resident, not being a company, or to a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India, any interest, not being "Interest on securities", or any other sum, not being dividends, chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay any income-tax and super-tax thereon as an agent, deduct income-tax and super-tax thereon at the rates in force:

Provided that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which a person responsible for the payment is deemed under the provison to sub-section (1) of section 163 not to be an agent of the payee

(2) Where the person responsible for paying any such sum chargeable under this Act (other than interest including interest on securities, dividend and salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

196. Interest or dividend payable to Government or the Reserve Bank.—Notwithstanding anything contained in sections 192 to 195, no deduction of tax shall be made on any interest or dividend payable to the Government or to the Reserve Bank of India in respect of any securities or shares owned by it or in which it has full beneficial interest.

197. Certificate for deduction at lower rate.—(1) Where, in the case of any income of any person other than a company—

(*a*) income-tax or super-tax is required to be deducted at the time of payment at the rates in force under the provisions of sections 192, 193 and 195,

(*b*) being a non-resident, super-tax is required to be deducted at the time of payment at the rates in force under the provisions of section 194,

the Income-tax Officer is satisfied that the total income or the total world income of the receipient justifies the deduction of Income-tax or super-tax at any lower rates or no deduction of income-tax or super-tax, as the case may be, the Income-tax Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(3) Where the principal officer of a company considers that, by reason of the provisions of sections 84 and 101, no tax will be payable by the recipient the whole or any portion of the dividend referred to in section 85 and sub-section (2) of section 101, he may, before paying the dividend to the shareholder or issuing any cheque or warrant in respect thereof, make an application to the Income-tax Officer to determine the appropriate proportion of the dividend on which, tax is not payable by the receipient under the provisions of sections 85 and 101; and on such determination by

the income-tax Officer no tax shall be deducted on such proportionate amount.

198. **Tax deducted is income received.**—All sums deducted in accordance with the provisions of sections 192 to 195 shall, for the purpose of computing the income of an assessee, be deemed to be income received.

199. **Credit for tax deducted.**—Any deduction made in accordance with the provisions of sections 192 to 195 and paid to the Central Government shall be treated as a payment of income-tax or super-tax as the case may be, on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under section 203 in the assessment, if any, made for the immediately following assessment year under this Act:

Provided that where such person or owner or shareholder is a person whose income is included under the provisions of section 60, section 61, section 64, section 93 or section 94 in the total income of another person, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, such other person:

Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income.

200. **Duty of person deducting tax.**—Any person deducting any sum in accordance with the provisions of sections 192 to 195 shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

201. **Consequences of failure to deduct or pay.**—(1) If any such person and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

Provided that no penalty shall be charged under section 221 from such person, principal officer or company unless the Income-tax Officer is satisfied that such person or principal officer or company, as the case may be, has wilfully failed to deduct and pay the tax.

(2) Where the tax has not been paid as aforesaid after it is deducted, it shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

202. **Deduction only one mode of recovery.**—The power to levy tax by deduction under sections 192 to 195 shall be without prejudice to any other mode of recovery.

203. **Certificate for tax deducted.**—Every person deducting income-tax or super-tax in accordance with the provisions of sections 192 to 195 shall, at the time of payment of the sum, or, as the case may be, at the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whom such payment is made, or the cheque or warrant is issued, a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.

204. **Meaning of person responsible for paying.**—For the purposes of sections 192 to 203 and section 285, the expression "person responsible for paying" means—

(*i*) in the case of payments of income chargeable under the head "Salaries", other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof;

(*ii*) in the case of payments of income chargeable under the head "Interest on securities", other than payments made by or on behalf of the Central Government or the Government of a State, the local authority, corporation or company, including the principal officer thereof;

(*iii*) in the case of payments of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

205. **Bar against direct demand on assessee.**—Where tax is deductible at the source under sections 192 to 195 the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

206. **Person paying salary to furnish prescribed return.**—(1) The prescribed person in the case of every office of the Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, and every private employer shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner, a return in writing showing—

(*a*) the name and, so far as it is known, the address of every person who was receiving on the 31st day of March, or has received or to whom was due during the year ending on that date, from the Government, company, authority, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;

(*b*) the amount of the income so received by or so due to each such person, and the time or times at which the same was paid or due, as the case may be;

(*c*) the amount deducted in respect of income-tax and super-tax from the income of each such person.

(2) Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under this section.

C.—Advance payment of tax

207. **Advance tax and income subject to advance tax.**—(1) Tax shall be payable in advance in accordance with the provisions of sections 208 to 219 in the case of income other than income chargeable under the head "Capital gains".

(2) Such income is hereinafter in this Chapter referred to as "income subject to advance tax", and such tax is hereinafter in this Chapter referred to as "advance tax".

208. **Condition of liability to pay andvance tax.**—Advance tax shall be payable in the financial year—

(*a*) where the total income exclusive of capital gains of the assessee referred to in sub-clause (*i*) of clause (*a*) of section 209 exceeded the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees; or

(*b*) where it is payable by virtue of the provisions of sub-section (3) of section 212.

209. **Computation of advance tax.**—The amount of advance tax payable by an assessee in the financial year shall be computed as follows.—

(*a*) (*i*) his total income of the latest previous year in respect of which he has been assessed by way of regular assessment shall first be as certained;

(*ii*) the amount of capital gains, if any, included in such total income shall be deducted therefrom, and on the balance, income-tax and super-tax shall be calculated at the rates in force in the financial year;

(*iii*) the income-tax and super-tax so calculated shall be reduced by the amount of income-tax and super-tax which would be deductible during the said financial year in accordance with the provisions of sections 192 to 195 on any income, included in the said total income;

(*iv*) the net amount of income-tax and super-tax calculated in accordance with sub-clause (*iii*) shall, subject to the provisions of clauses (*b*) and (*c*), be the advance tax payable.

(*b*) in cases where under the provisions of section 113 the tax payable by the assessee is to be determined with reference to his total world income, the advance tax payable by him shall be calculated in the manner laid down in that section.

(*c*) in cases where an estimate is sent by the assessee under sub-section (1) or sub-section (2) or sub-section (3) of section 212, the total income so estimated shall, for the purposes of calculation of tax under this section,

be substituted for the total income referred to in clause (*a*).

Explanation.— If the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than the latest previous year for which the assessee's assessment has been completed, his share in the income of the firm shall, for the purposes of clauses (*a*) and (*b*), be included in his total income on the basis of the said assessment of the firm.

210. Order by Income-tax Officer.—(1) Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922 (11 of 1922) the Income-tax Officer may, on or after the 1st day of April, in the financial year, by order in writing, require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of sections 207, 208 and 209.

(2) The notice of demand issued under section 156 in pursuance of such order shall specify the instalments in which the advance tax is payable under section 211.

(3) If, after the making of an order by the Income-tax Officer under this section and before the 15th day of February of the financial year, and assessment of the assessee (or of the registered firm of which he is a partner) is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if more than one, falling after the date of the amended order, the advance tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order:

Provided that in every case where an assessment of the assessee (or of the registered firm of which he is a partner) is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer and the advance tax payable on the basis of such assessment is less than the advance tax determined as payable in accordance with the original order under sub-section (1), the Income-tax Officer shall make an amended order determining the advance tax on the revised basis and refund the amount already paid, if any, in excess of the advance tax so determined.

211. Instalments of advance tax.—(1) Subject to the provisions of this section and of section 212, advance tax shall be payable in equal instalments on the 1st day of June, 1st day of September, 1st day of December and 1st day of March in the financial year:

Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the advance tax on that source of income shall, subject as aforesaid, be payable in three equal instalments on the 1st day of September, the 1st day of December and the 15th day of March, respectively

(2) If the notice of demand issued under section 156 in pursuance of the order under section 210 is served after any of the dates on which the instalments specified therein are payable, the advance tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand, or in one sum on the 1st day of March if the notice is served after the 1st day of December.

212. Estimate by assessee.—(1) If any assessee, who is required to pay advance tax by an order under section 210, estimates at any time before the last instalment is due that his income subject to advance tax for the period which would be the previous year for the immediately following assessment year, is less than the income on which he is required to pay such tax, and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer—

(*i*) an estimate of the total income exclusive of capital gains for that period;

(*ii*) an estimate of the advance tax payable by him calculated in the manner laid down in section 209;

and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in section 211 as have not expired or in one sum if only the last of such dates has not expired.

(2) The assessee may send a revised estimate of the advance tax payable by him before any one of the dates specified in section 211 and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(3) Any person who has not previously been assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922 (11 of 1922) shall before the 1st day of March in each financial year, if his total income exclusive of capital gains of the period which would be the previous year for the immediately following assessment year is likely to exceed the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees, send to the Income-tax Officer—

(*i*) an estimate of the total income exclusive of capital gains of the said previous year;

(*ii*) an estimate of the advance tax payable by him calculated in the manner laid down in section 209;

and shall pay such amount as accords with his estimate, on such of the dates specified in section 211 as have not expired, by instalments which may be revised according to sub-section (2).

(4) Every estimate under this section shall be sent in the prescribed form and verified in the prescribed manner.

213. Commission receipts.—Where part of the income subject to advance tax consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments of advance tax become due, he may defer payment of advance tax on that part of this income to the date on which such income would be normally received or adjusted and, if he does so, he shall communicate to the Income-tax Officer the date to which such payment is deferred:

Provided that, if the advance tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the advance tax shall be payable with four per cent simple interest per annum from the date of such receipt or adjustment to the date of payment of the advance tax.

214. Interest payable by Government.—(1) The Central Government shall pay simple interest at four per cent per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made.

215. Interest payable by assessee.—(1) Where in any financial year an assessee has paid advance tax under section 212 on the basis of his own estimate, and the advance tax so paid is less than seventy-five per cent of the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 195) so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of four per cent per annum from the 1st day of April next following the said financial year up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the said seventy-five per cent.

(2) Where provisional assessment is made under section 141—

(*i*) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid; and

(*ii*) thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income subject to advance tax) falls short of the said seventy-five per cent.

(3) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260

or section 262 or section 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded

(4) In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee under this section.

216. Interest payable by assessee in case of under estimate, etc.—Where, on making the regular assessment, the Income-tax Officer finds that any assessee has—

(*a*) under sub-section (1) or sub-section (2) or sub-section (3) of section 212 under-estimated the advance tax payable by him and thereby reduced the amount payable in any of the first three instalments; or

(*b*) under section 213 wrongly deferred the payment of advance tax on a part of his income;

he may direct that the assessee shall pay simple interest at four per cent per annum—

(*i*) in the case referred to in clause (*a*), for the period during which the payment was deficient, on the difference between the amount paid in each such instalment and the amount which should have been paid, having regard to the aggregate advance tax actually paid during the year; and

(*ii*) in the case referred to in clause (*b*), for the period during which the payment of advance tax was so deferred.

Explanation.—For the purposes of this section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

217. Interest payable by assessee when no estimate made.—(1) Where, on making the regular assessment, the Income-tax Officer finds that any such person as is referred to in sub-section (3) of section 212 has not sent the estimate referred to therein, simple interest at the rate of four per cent per annum from the first day of April next following the financial year in which the advance tax was payable in accordance with the said provisions up to the date of the regular assessment shall be payable by the assessee upon the amount equal to the seventy-five per cent referred to in sub-section (1) of section 215.

(2) The provisions of sub-sections (2), (3) and (4) of section 215 shall apply to interest payable under this section as they apply to interest payable under that section.

218. When assessee deemed to be in default.—(1) If any assessee does not pay on the specified date any instalment of advance tax that he is required to pay under section 210 and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (1) or sub-section (2) of section 212 an estimate or a revised estimate of the advance tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments.

(2) If any assessee has sent under sub-section (1) or sub-section (2) or sub-section (3) of section 212 an estimate or a revised estimate of the advance tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in section 211, he shall be deemed to be an assessee in default in respect of such instalment or instalments

Provided that the assessee shall not, under sub-section (1) or this sub-section, be deemed to be in default in respect of any amount of which the payment is deferred under section 213 until after the date communicated by him to the Income-tax Officer under that section.

219. Credit for advance tax.—Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax in pursuance of this Chapter shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.

D.—Collection and recovery

220. When tax payable and when assessee deemed in default.—(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty-five days of the service of the notice at the place and to the person mentioned in the notice

Provided that, where the Income-tax Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty-five days aforesaid is allowed, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty-five days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at four per cent per annum from the day commencing after the end of the period mentioned in sub-section (1).

(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Income-tax Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 the Income-tax Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form

221. Penalty payable when tax in default.—(1) When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (2) of section 220, be liable to pay by way of penalty, an amount which, in the case of a continuing default, may be increased from time to time so, however, that the total amount of penalty does not exceed the amount of tax in arrears:

Provided that before levying any such penalty the assessee shall be given a reasonable opportunity of being heard.

(2) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

222. Certificate to Tax Recovery Officer.—(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Income-tax Officer may, forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt

of such certificate shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—

(*a*) attachment and sale of the assessee's movalbe property;

(*b*) attachment and sale of the assessee's immovable property;

(*c*) arrest of the assessee and his detention in prison;

(*d*) appointing a receiver for the management of the assessee's movable and immovable properties.

(2) The Income-tax Officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

223. Tax Recovery Officer to whom certificate is to be issued.—(1) The Income-tax Officer may forward the certificate referred to in section 222 to—

(*a*) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his his business or profession is situate; or

(*b*) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate.

(2) If the Tax Recovery Officer to whom a certificate is sent by an Income-tax Officer is not able to recover the entire amount by the sale of the property, movable and immovable, but has information that the assessee has property in a district within the jurisdiction of another Tax Recovery Officer, he may send the certificate to such other Tax Recovery Officer or to a Tax Recovery Officer within whose jurisdiction the assessee resides, and thereupon that Tax Recovery Officer shall proceed to recover the amount under this Chapter as if the certificate was sent to him by the Income-tax Officer.

224. Validity of certificate, and amendment thereof.—(1) When the Income-tax Officer sends a certificate to a Tax Recovery Officer under section 222, it shall not be open to the assessee to dispute before the Tax Recovery Officer the correctness of the assessment, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Tax Recovery Officer, the Income-tax Officer shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.

(3) The Income-tax Officer shall itimate to the Tax Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) of this section or any amendment made under sub-section (4) of section 225.

225. Stay of proceedings under certificate and amendment or withdrawal thereof.—(1) Notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax, the Income-tax Officer may grant time for the payment of the tax, and thereupon the Tax Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of tax has been issued, the Income-tax Officer shall keep the Tax Recovery Officer informed of any tax paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Income-tax Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of tax has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Income-tax Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

226. Other modes of recovery.—(1) Notwithstanding the issue of a certificate to the Tax Recovery Officer under section 222, the Income-tax Officer may recover the tax by any one or more of the modes provided in this section

(2) If any assessee is in receipt of any income chargeable under the head "Salaries", the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs:

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908) shall be exempt from any requisition made under this sub-section.

(3) (*i*) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(*ii*) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(*iii*) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Officer, and in the case of a joint account to all the joint-holders at their last addresses known to the Income-tax Officer

(*iv*) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(*v*) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(*vi*) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*vii*) The Income-tax Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(*viii*) The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(*ix*) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*x*) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof

to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

(4) The Income-tax Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Income-tax Officer may if so authorised by the Commissioner, proceed to recover the tax by distraint and sale of the movable property of the assessee in the manner laid down in the Third Schedule.

227. Recovery through State Government.—If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an adition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

228. Recovery of Indian tax in Pakistan and Pakistan tax in India.—(1) The Income-tax Officer may forward a certificate under section 222 to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector, and for the purposes of that section the expression "Tax Recovery Officer" shall include a Collector in Pakistan.

(2) Where a Collector in India receives through the Board a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in India, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting his expenses in connection with the recovery proceedings

(3) The provisions of this section shall remain in force only so long as there are in force similar provisions in the law of Pakistan for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in India.

229. Recovery of penalties, fine, interest and other sums.—Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

230. Tax Clearance Certificates.—(1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf no person who is not domiciled in India, or who, even if domiciled in India at the time of his departure has, in the opinion of an Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940, (15 of 1940), the Business Profits Tax Act, 1947, (21 of 1947) the Indian Income-tax Act, 1922, (11 of 1922) the Wealth Tax Act, 1957, (27 of 1957), the Expenditure Tax Act, 1957 (29 of 1957), or the Gift Tax Act, 1958, (18 of 1958), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that persons

Provided that in the case of a person not domiciled in India the competent authority may, if it is satisfied that such person intends to return to India, issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(2) If the onwer or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer may, having regard to the circumstances of the case, determine.

(3) In respect of any sum payable by the onwer or charterer of any ship or aircraft under sub-section (2) the owner or charterer, as the case may be, shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

(4) The Board may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation.—For the purposes of this section, the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

231. Period for commencing recovery proceedings. Save in accordance with the provisions of section 173 or sub-section (7) of section 220, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which the demand is made, or, in the case of a person who is deemed to be an assessee in default under any provision of this Act, after the expiration of one year from the last day of the financial year in which the assessee in deemed to be in default.

Explanation 1.—The period of one year referred to above shall be reckoned—

(*i*) where an assessee has been treated as not being in default under sub-section (6) of section 220, as long as his appeal is undisposed of, from the last day of the financial year in which the appeal is disposed of;

(*ii*) where recovery proceedings in any case have been stayed by any order of a court, from the last day of the financial year in which the order is withdrawn;

(*iii*) where the date of payment of tax has been extended by an Income-tax authority to another date, from the last day of the financial year in which such other date falls;

(*iv*) where the sum payable is allowed to be paid by instalments, from the last day of the financial year in which the last of such instalments is due

Explanation 2.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to.

232. Recovery by suit or under other law not affected.—The several modes of recovery specified in this Chapter shall not effect in any way—

(*a*) anyother law for the time being in force relating to the recovery of debts due to Government; or

(*b*) the right of the Government to institute a suit for the recovery of the arrears due from the assessee,

and it shall be lawful for the Income-tax Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

E.—Tax payable under provisional assessment

233. Recovery of tax payable under provisional assessment.—For the removal of doubts, it is hereby declared that the provisions of section 220, except sub-section (6) thereof, and sections 221 to 229 apply in relation to any tax payable in pursuance of a provisional assessment made under section 141 as if it were a regular assessment made under section 143 or 144.

234. Tax paid by deduction or advance payment.—Tax paid or deemed to have been paid under the provisions of Chapter XVII-B or Chapter XVII-C in respect of any income provisionally assessed under section 141 shall be deemed to have been paid towards the provisional assessment

CHAPTER XVIII

RELIEF RESPECTING TAX ON DIVIDENDS IN CERTAIN CASES

235. Relief to shareholders in respect of agricultural income-tax attributable to dividends.—Where a company pays to a shareholder any dividend out of its profits

and gains which is assessed to agricultural income-tax by any State Government the shareholder shall be entitled to a reduction from the tax payable by him under this Act, of a sum equal to—

(*a*) that proportion of the agricultural income-tax (including super-tax, if any) paid by the company as the amount of the dividend attributable to the profits of the company assessed to agricultural income-tax bears to its total profits assessed to agricultural income-tax reduced by the amount of refund, if any, allowed to him by the State Government; or

(*b*) where the shareholder—

(*i*) is not a company, the amount of income-tax (but not super-tax) payable by him under this Act, and

(*ii*) is a company, twenty per cent,

on that portion of the dividend which is attributable to the profits of the company assessed to agricultural income-tax;

whichever is less.

236. Relief company in respect of dividend paid out of past taxed profits.—(1) Where in respect of any previous year relevant to the assessment year commencing after the 31st day of March, 1960, an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends within India, pays any dividend wholly or partly out of its profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960, and deducts tax therefrom in accordance with the provisions of Chapter XVII-B, credit shall be given to the company against the income-tax, if any, payable by it on the profits and gains of the previous year during which the dividend is paid of a sum calculated in accordance with the provisions of sub-section (2), and, where the amount of credit so calculated exceeds the income-tax payable by the company as aforesaid, the excess shall be refunded.

(2) The amount of income-tax to be given as credit under sub-section (1) shall be a sum equal to ten per cent of so much of the dividends referred to in sub-section (1) as are paid out of the profits and gains actually charged to income-tax for any assessment year ending before the 1st day of Apirl, 1960.

Explanation. 1.—For the purposes of this section, the aggregate of the dividends declared by a company in respect of any previous year shall be deemed first to have come out of the distributable income of that previous year and the balance, if any, out of the undistributed part of the distributable income of one or more previous years immediately preceding that previous year as would be just sufficient to cover the amount of such balance and as has not likewise been taken into account for covering such balance of any other previous year.

Explanation 2.—The expression "distributable income of any previous year" shall mean the total income assessed for that year as reduced by—

(*i*) the amount of tax payable by the company in respect of the said total income;

(*ii*) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

(*iii*) the amount paid any charitable institution or fund to the extent to which it is exempt from tax under sections 88 and 100; and

(*iv*) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies, Act, 1949 (10 of 1949),

and as increased by—

(*a*) any profits and gains or receipts of the company, not included in its total income; and

(*b*) any amount attributable to any allowance made in computing the profits and gains of the company for purposes of assessment, which the company has not taken into account in its profits and loss account.

CHAPTER XIX

Refunds

237. Refunds.—If any person satisfies the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess

238. Person entitled to claim refund in certain special cases.—(1) Where the income of one person is included under any provision of this Act in the total of income any other person, the latter alone shall be entitled to a refund under this Chapter in respect of such income.

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be shall be entitled to claim or receive such refund for the benefit of such person or his estate.

239. Form of claim for refund and limitation.—(1) Every claim for refund under this Chapter shall be made in the prescribed form and verified in the prescribed manner

(2) No such claim shall be allowed, unless it is made within four years from the last day of the assessment year in which the income in respect of which the claim is made was assessable

240. Refund on appeal, etc.—Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Income-tax Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf

241. Power to withhold refund in certain cases. - Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Income-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Income-tax Officer may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine

242. Correctness of assessment not to be questioned.—In a claim under this Chpater, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

243. Interest on delayed refunds.—(1) If the Income-tax Officer does not grant the refund,

(*a*) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the date on which the total income is determined under this Act; and

(*b*) in any other case, within six months from the date on which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at four per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months or six months aforesaid, as the case may be, to the date of the order granting the refund

Explanation.—If the delay in granting the refund within the period of six months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner whose decision shall be final.

244. Interest on refund where no claim is needed.—(1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax Officer does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at four per cent per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of six months from the date of the order referred to in section 241 to the date the refund is granted.

245. **Set off of refunds against tax remaining payable.**—Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount against the sum, if any, remaining payable under this Act by the person to whom the refund is due after giving an intimation in writing to such person of the action proposed to be taken under this section.

CHAPTER XX

APPEALS AND REVISION

A.—Appeals to the Appellate Assistant Commissioner

246. **Appealable orders.**—Any assessee aggrieved by any of the following orders of an Income-tax Officer may appeal to the Appellate Assistant Commissioner against such order—

(*a*) an order against the assessee, being a company under section 104;

(*b*) an order imposing a fine under sub-section (2) of section 131,

(*c*) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed or to the amount of tax determined, or to the amount of loss computed or to the status under which is he is assessed;

(*d*) an order under section 146 refusing to reopen an assessment made under section 144,

(*e*) an order of sassessment, re-assessment or re-computation under section 147 or section 150;

(*f*) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(*g*) an order made under section 163 treating the assessee as the agent of a non-resident,

(*h*) an order under sub-section (2) or sub-section (3) of section 170;

(*i*) an order under section 171,

(*j*) an order refusing to register a firm under clause (*b*) of sub-section (1) or under sub-section (5) of section 185;

(*k*) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186,

(*l*) an order under section 201;

(*m*) an order under section 216;

(*n*) an order under section 237;

(*o*) an order imposing a penalty under—

(*i*) section 221, or

(*ii*) section 270, or

(*iii*) section 271, or

(*iv*) section 272, or

(*v*) section 273,

Explanation.—"Status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

247. **Appeal by partner.**—Where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but he cannot agitate such matters in any appeal preferred against an order of assessment determining his own total income or loss.

248. **Appeal by person denying liability to deduct tax.**—Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the appellate Assistant Commissioner to be declared not liable to make such deduction.

249. **Form of appeal and limitation.**—(1) Every appeal under this Chapter shall be in the prescribed form shall be verified in the prescribed manner.

(2) The appeal shall be presented within thirty days of the following date, that is to say,—

(*a*) where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax or

(*b*) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty; or

(*c*) in any other case, the date on which intimation of the order sought to be appealed against is served.

(3) The Appellate Assistant Commissioner may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period

250. **Procedure in appeal.**—(1) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Income-tax Officer against whose order the appeal is preferred.

(2) The follwing shall have the right to be heard at the hearing of the appeal—

(*a*) the appellant, either in person or by an authorised respresentative

(*b*) the Income-tax Officer, either in person or by a representative.

(3) The Appellate Aissistant Commissioner shall have the power to adjourn the hearing of the appeal from time to time.

(4) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Income-tax Officer to make further inquiry and report the result of the same to the Appellate Assistant Commissioner.

(5) The Appellate Aissistant Commissioner may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(7) On the disposal of the appeal, the Appellate Assistant Commissioner shall communicate the order passed by him to the assessee and to the Commissioner

251. **Powers of the Appellate Assistant Commissioner.**—(1) In disposing of an appeal, the Appellate Assistant Commissioner shall have the following powers—

(*a*) in an appeal against an order of assessment, he may confirm, reduce, enhance or annual the assessment; or he may set aside the assessement and refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner and after making such further inquiry as may be necessary, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(*b*) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enahance or to reduce the penalty;

(*c*) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Appellate Assistant Commissioner shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction

Explanation.—In disposing of an appeal, the Appeallate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner by the appellant.

B.—Appeals to the Appellate Tribunal

252. **Appellate Tribunal.**—(1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade III) for at least three years or who has been in practice as an advocate for at least ten years; and an accountant

member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has served as an Assistant Commissioner of Income-tax for at least three years.

(3) The Central Government shall ordinarily appoint a judicial member of the Appellate Tribunal to be the President thereof.

253. Appeals to the Appellate Tribunal.—(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(*a*) an order passed by an Appellate Assistant Commissioner under sub-section (2) of section 131, section 250 or section 271; or

(*b*) an order passed by an Inspecting Assistant Commissioner under sub-section (2) of section 274; or

(*c*) an order passed by a Commissioner under section 263.

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 250, direct the Income-tax Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

(4) The Income-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Appellate Assistant Commissioner, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is stisfied that there was sufficient cause for not presenting it within that period

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and, shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of rupees one hundred.

254. Orders of Appellate Tribunal.—(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Income-tax Officer:

Provided that an amendment which has the effect of enhancing as an assessment or reducing a redund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonalbe opportunity of being heard.

(3) The Appealite Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.

(4) Save as provided in section 256, orders passed by the Appellate Tribunal on appeal shall be final.

255. Procedure of Appellate Tribunal.—(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax Officer in the case does not exceed twenty-five thousand rupees, and the President may, for the disposal of any particular case, constitute a special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

C.—Reference to High Court

256. Statement of case to the High Court.—(1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of prupees one hundred require the Appellate Tribuanal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period herein before specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(3) Where in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

257. Statement of cases to Supreme Court in certain cases.—If, on an application made under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the

case and refer it through its President direct to the Supreme Court.

258. Power of High Court or Supreme Court to require statement to be amended.—If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

259. Case before High Court to be heard by not less than two judges.—(1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

260. Decision of High Court or Supreme Court on the case stated.—(1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment theron containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court

D.—Appeals to the Supreme Court

261. Appeal to Supreme Court.—An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 256 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

262. Hearing before Supreme Court.—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court

E.—Revision by the Commissioner

263. Revision of orders pro-judicial to revenue.—(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1)—

(*a*) to revise an order of reassessment made under section 147, or

(*b*) after the expiry of two years from the date of the order sought to be revised.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

264. Revision of other orders.—(1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner, may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in equestion was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired or in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(*b*) where the order is pending on an appeal before the Appellate Assistant Commissioner; or

(*c*) where the order has been made the subject of an appeal to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2.—For the purposes of this section, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.

F.—General

265. Tax to be paid notwithstanding reference, etc.—Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

266. Execution for costs awarded by Supreme Court.—The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

267. Amendment of assessment on appeal.—Where as the result of an apeal under section 246 or section 253, any change is made in the assessment of a firm or body of individuals or an association of persons or a new assessment of a firm or a body of individuals or an association of persons is ordered to be made, the Appellate Assistant Commissioner or the Appellate Tribunal, as the cases may be, shall pass an order authorising the Income-tax Officer either to amend the assessment made on any partner of the firm or any member of the body or association or make a fresh assessment on any partner of the firm or on any member of the body or association.

268. Exclusion of time taken for copy.—In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

269. Definition of "High Court".—In this Chapter,—

"High Court" means,—

(*i*) in relation to any State, the High Court for that State;

(*ii*) in relation to the Union territories of Delhi and Himachal Pradesh, the High Court of Punjab;

(*iii*) in relation to the Union territories of Manipur and Tripura, the High Court of Assam;

(*iv*) in relation to the Union territory of the Andaman and Nicobar islands, the High Court at Calcutta; and

(*v*) in relation to the Union territory of the Laccadive, Minicoy and Amindivi islands, the High Court of Kerala.

CHAPTER XXI

PENALTIES IMPOSABLE

270. Failure to furnish information regarding securities, etc.—If any person without reasonable excuse fails to comply with a notice issued under sub-section (6) of section 94, the Income-tax Officer may direct that such person shall pay by way of penalty a sum not exceeding five hundred rupees and by way of further penalty a like amount for every day after the infliction of such penalty during which the failure continues.

271. Failure to furnish returns, comply with notices, concealment of income, etc.—(1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 139 or by such notice, as the case may be, or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143, or

(*c*) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty,—

(*i*) in the cases referred to in clause (*a*), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the tax;

(*ii*) in the cases referred to in clause (*b*), in addition to any tax payable by him, a sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income;

(*iii*) in the cases referred to in clause (*c*), in addition to any tax payable by him, a sum which shall not be less than twenty per cent but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income.

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (*b*) of section 183, then, notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.

(3) Notwithstanding anything contained in this section,—

(*a*) no penalty for failure to furnish the return of his total income under sub-section (1) of section 139 shall be imposed under sub-section (1) on an assessee whose total incom does not exceed the maximum amount not chargeable to tax in his case by one thousand five hundred rupees;

(*b*) where a person has failed to comply with a notice under sub-section (2) of section 139 or section 148 and proves that he has no income liable to tax, the penalty imposable under sub-section (1) shall not exceed twenty-five rupees;

(*c*) no penalty shall be imposed under sub-section (1) upon any person assessable under clause (*i*) of sub-section (1) of section 160, read with section 161, as the agent of a non-resident for failure to furnish the return under sub-section (1) of section 139.

(4) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the tax, if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

272. Failure to give notice of discontinuance.—Where any person fails to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty which shall not be less than ten per cent of the tax but which shall not exceed the amount of tax subsequently assessed on him in respect of any income of the business or profession up to the date of its discontinuance

273. False estimate of or failure to pay advance tax.—If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—

(*a*) has furnished under section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or

(*b*) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of sub-section (3) of section 212,

he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum—

(*i*) which, in the case referred to in clause (*a*) shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of—

(1) seventy-five per cent of the tax determined on regular assessment, as modified under the provisions of section 215, or

(2) where a notice under section 210 was issued to the assessee, the amount payable thereunder,

whichever is less; and

(*ii*) which, in the case referred to in clause (*b*), shall not be less than ten per cent but shall not exceed one and a half times the amount on which interest is payable under section 217.

274. Procedure.—(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in clause (*iii*) of sub-section (1) of section 271, if in a case falling under clause (*c*) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.

(3) An Appellate Assistant Commissioner on making an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income-tax Officer.

275. Bar of limitation for imposing penalties.—No order imposing a penalty under this Chapter shall be passed after the expiration of two years from the date of the completion of the proceedings in the course of which the proceedings for the imposition of penalty have been commenced.

Explanation.—In computing the period of limitation for the purpose of this section, the time taken in giving an opportunity to the assessee to be re-heard under

the proviso to section 129 and any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court shall be excluded

CHAPTER XXII

OFFENCES AND PROSECUTIONS

276. Failure to make payments or deliver returns or statements or allow inspection.—If a person fails without reasonable cause or excuse—

(*a*) to grant inspection or allow copies to be taken in accordance with the provisions of section 134;

(*b*) to furnish in due time any of the returns or statements mentioned in section 133, sub-section (2) of section 139, section 206, section 285 or section 286,

(*c*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (1) of section 142, such accounts and documents as are referred to in the notice;

(*d*) to deduct and pay tax as required by the provisions of Chapter XVII-B or under sub-section (2) of section 226; or

(*e*) to furnish a certificate required by section 203,

he shall be punishable with fine which may extend to ten rupees for every day during which the default continues.

277. False statement in declaration.—If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

278. Abetment of false return, etc.—If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

279. Prosecution to be at instance of Commissioner.—(1) A person shall not be proceeded against for an offence under section 276 or section 277 or section 278 except at the instance of the Commissioner.

(2) The Commissioner may either before or after the institution of proceedings compound any such offence.

280. Disclosure of particulars by public servants.—(1) If a public servant discloses any particulars, the disclosure of which is prohibited by section 137, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(2) No prosecution shall be instituted under this section except with the previous sanction of the Central Government

CHAPTER XXIII

MISCELLANEOUS

281. Transfers to defraud revenue void.—Where, during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding:

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.

282. Service of notice generally.—(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed—

(*a*) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(*b*) in the case of a local authority or company, to the principal officer thereof;

(*c*) in the case of any other association or body of individuals, to the principal officer or any member thereof.

(*d*) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

283. Service of notice when family is disrupted or firm, etc. is dissolved.—(1) After a finding of total partition has been recorded by the Income-tax Officer under section 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.

(2) Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

284. Service of notice in the case of discontinued business.—Where an assessment is to be made under section 176, the Income-tax Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.

285. Information by persons responsible for paying interest.—The person responsible for paying any interest, not being "Interest on securities", shall, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer having jurisdiction to assess him, a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount, not being less than four hundred rupees, as may be prescribed in this behalf, together with the amount paid to each such person.

286. Information by companies respecting shareholders to whom dividends have been paid.—The principal officer of every company which is an Indian company or a company which has made such arrangements as may be prescribed for the declaration and payment of dividends in India shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each shareholder.

287. Publication of information respecting penalities in certain cases.—(1) The Central Government shall cause to be published, by Notification in the Official Gazette, the names and such other particulars as may be relevant, of—

(*a*) persons on each of whom a penalty amounting to not less than five thousand rupees or such lesser amount as may be fixed by the Central Government, by Notification in the Official Gazette, has been imposed under clause (*c*) of sub-section (1) of section 271, and

(*b*) persons who have been convicted as a result of any proceedings under section 277 or under any provision of the Indian Penal Code (45 of 1860), for any offence connected with any proceedings under this Act.

(2) If in the interests of revenue the Central Government considers it necessary so to do, it may also cause to be published, by notification in the Official Gazette, the names and such other particulars as may be relevant of—

(*a*) persons on each of whom a penalty has been imposed under clause (*a*) or clause (*b*) of sub-section (1) of section 271; or

(*b*) persons on each of whom a penalty of an amount not exceeding the amount referred to in clause (*a*) of sub-section (1) has been imposed under clause (*c*) of sub-section (1) of section 271; or

(c) persons who have been convicted as a result of any proceedings under any provision of this Act other than section 277.

(3) No publication under this section shall be made—

(i) in the case of an assessee mentioned in clause (a) of sub-section (1) or in clause (a) or clause (b) of sub-section (2) who has presented an appeal under section 246 or under clause (b) of sub-section (1) of section 253 against the order imposing the penalty, until the appeal is disposed of by the Appellate Assistant Commissioner, or, in the case of an appeal filed under clause (b) of sub-section (1) of section 253, by the Appellate Tribunal;

(ii) in the case of an assessee mentioned in clause (b) of sub-section (1) or clause (c) of sub-section (2), until the time for appealing has expired without an appeal having been presented, or the appeal, if presented, has been disposed of.

(4) Notwithstanding anything contained in this section, the Central Government may refrain from publishing the name of any person if it is satisfied that in the interests of revenue it is necessary so to do, and where the Central Government refrains from publishing the name of any person, the reason for not publishing the name shall be recorded in writing.

(5) Every notification issued under this section shall be laid before Parliament as soon as may be after it is made.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in sections 137 and 280.

(7) The provisions of this section shall have effect in relation to penalties imposed after the 1st day of April, 1960, under the Indian Income-tax Act, 1922 (11 of 1922) or to proceedings for any offence initiated after the said date under that Act as they have effect in relation to penalties imposed or proceedings initiated under this Act with the modification that references in this section to any provision of this Act shall be construed as references to the corresponding provision of that Act.

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

288. Appearance by authorised representative.—(1) Any assessee who is entitled or required to attend before any Income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—

(i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or

(ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practise in any civil court in India; or

(iv) an accountant; or

(v) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(vi) any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or

(vii) any other person who, immediately before the commencement of this Act, was an Income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922) and was actually practising as such.

Explanation.—In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, (1 of 1956) is entitled to be appointed to act an auditor of companies registered in that State.

(3) Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an Income-tax authority, not below the rank of Income-tax Officer, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), from the date of his first employment as such, he shall not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person—

(a) who has been dismissed or removed from Government service after the 1st day of April, 1938; or

(b) who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act other than a penalty imposed on him under clauses (i) and (ii) of sub-section (1) of section 271; or

(c) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in sub-clause (a), for such time as the Commissioner may by order determine in the case of a person referred to in sub-clause (b), and for the period during which the insolvency continues in the case of a person referred to in sub-clause (c).

(5) If any person—

(a) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practise as a legal practitioner or accountant, as the case may be;

(b) who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent an assessee under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely,—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

(7) A person disqualified to represent an assessee by virtue of the provisions of sub-section (3) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), shall be disqualified to represent an assessee under sub-section (1).

289. Receipt to be given.—A receipt shall be given for any money paid or recovered under this Act.

290. Indemnity.—Every person deducting, retaining, or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention, or payment thereof.

291. Power to tender immunity from prosecution.—(1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the concealment of income or to the evasion of payment of tax on income, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution

for any offence in respect of which the tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn, and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

292. **Cognisance of offences.**—No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.

293. **Bar of suits in civil courts.**—No suit shall be brought in any civil court to set aside or modify any assessment order made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

294. **Act to have effect pending legislative provision for charge of tax.**—If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of income-tax or super-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

295. **Power to make rules.**—(1) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters—

(*a*) the ascertainment and determination of any class of income;

(*b*) the manner in which and the procedure by which the income shall be arrived at in the case of —

(*i*) income derived in part from agriculture and in part from business;

(*ii*) persons residing outside India,

(*c*) the determination of the value of any perquisite chargeable to tax under this Act in such manner and on such basis as appears to the Board to be proper and reasonable;

(*d*) the percentage on the written down value which may be allowed as depreciation in respect of buildings, machinery, plant or furniture;

(*e*) the percentage or the amount to be prescribed under clause (*i*) of sub-section (3) of section 87;

(*f*) the manner in which and the period to which any such income as is referred to in section 180 may be allocated;

(*g*) the authority to be prescribed for any of the purposes of this Act;

(*h*) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Act;

(*i*) the form and manner in which any application, claim, return or information may be made or furnished and the fees that may be levied in respect of any application or claim;

(*j*) the manner in which any document required to be filed under this Act may be verified;

(*k*) the procedure to be followed on applications for refunds;

(*l*) the regulation of any matter for which provision is made in section 230;

(*m*) the form and manner in which any appeal or cross objection may be filed under this Act, the fee payable in respect thereof and the manner in which intimation of any such order as is referred to in clause (*c*) of sub-section (2) of section 249 may be served;

(*n*) the maintenance of a register of persons other than legal practitioners or accountants as defined in sub-section (2) of section 288 practising before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (5) of that section;

(*o*) the issue of certificate verifying the payment of tax by assessees;

(*p*) any other matter which by this Act is to be, or may be, prescribed.

(3) In cases coming under clause (*b*) of sub-section (2), where the income liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable, the rules made under this section may—

(*a*) prescribe methods by which an estimate of such income may be made; and

(*b*) in cases coming under sub-clause (*i*) of clause (*b*) of sub-section (2) specify the proportion of the income which shall be deemed to be income liable to tax;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

296. **Rules to be placed before Parliament.**—The Central Government shall cause every rule made under this Act to be laid as soon as may be after it is made before each House, of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, that rule shall thereafter have effect, only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

297. **Repeals and savings.**—(1) The Indian Income-tax Act, 1922 (11 of 1922), is hereby repealed.

(2) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act),—

(*a*) where a return of income has been filed before the commencement of this Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed;

(*b*) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under section 34 of the repealed Act by any person for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;

(*c*) any proceeding pending on the commencement of this Act before any income-tax authority, the appellate tribunal or any court, by way of appeal, reference or revision, shall be continued and disposed of as if this Act had not been pass ed;

(*d*) where in respect of any assessment year after the year ending on the 31st day of March, 1940,—

(*i*) a notice under section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(*ii*) any income chargeable to tax had escaped assessment within the meaning of that expression in section 147 and no proceedings under section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under section 148 may, subject to the provisions contained in section 149 or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

(*e*) section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962, or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

(*f*) any proceeding for the imposition of a penalty

in respect of any assessment completed before the 1st day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(*g*) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(*h*) any election or declaration made or option exercised by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provision of this Act;

(*i*) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply;

(*j*) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;

(*k*) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;

(*l*) any notification issued under sub-section (1) of section 60 of the repealed Act and in force immediately before the commencement of this Act shall, to the extent to which provision has not been made under this Act, continue in force until rescinded by the Central Government,

(*m*) where the period prescribed for any application appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority.

298. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which the repealed Act shall apply in relation to the assessments for the assessment year ending on the 31st day of March, 1962, or any earlier year.

THE FIRST SCHEDULE

INSURANCE BUSINESS

(See section 44)

A.—Life insurance business

1. Profits of life insurance business to be computed separately.—In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.

2. Computation of profits of life insurance business.—(1) The profits and gains of life insurance business shall be taken to be the greater of the following—

(*a*) the gross external incomings of the previous year from that business, less the management expenses of that year;

(*b*) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938), in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure or allowance which is not deductible under the provisions of sections 30 to 43 in computing income chargeable under the head "Profits and gains of business or profession".

(2) The amount to be allowed as management expenses under sub-rule (1) shall not exceed the aggregate of the following:—

(*a*) 7-1/2 per cent of the premiums received during the previous year in respect of single premium life insurance policies;

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums payable is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year 7-1/2 per cent of such first year's premiums received during the previous year;

(*c*) 90 per cent of the first year's premiums received during the previous year in respect of all other life insurance policies,

(*d*) in respect of all renewal premiums received during the previous year, an amount calculated at such percentage thereof as is permissible under sub-section (2) of section 40-B of the Insurance Act, 1938 (4 of 1938), as reduced by any expenditure or allowance which is not deductible under sections 30 to 43 in computing income chargeable under the head "Profits and gains of business or profession".

3. Deductions.—In computing the surplus for the purpose of rule 2,—

(*a*) four-fifths of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction:

Provided that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders, that proportion of such amount (one-half or four-fifths, as the case may be) if it has been previously allowed as a deduction under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved.

(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of investments shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Controller of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of investments so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation or to the amount to be included in the surplus in respect of appreciation of such investments as shall increase the surplus for the purposes of these provisions to be a figure which is fair and just;

(*c*) interest received during the inter-valuation period in respect of any securities of the Central Government which have been issued or declared to be income-tax free, shall not be excluded, but no income-tax shall be payable on the annual average of the amount of such interest.

4. Adjustment of tax paid by deduction at source.—Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the income-tax payable for that year, credit shall not be given in accordance with section 199 for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by

deduction at source from interest on securities or otherwise during such period

B.—Other insurance business

5. **Computation of profits and gains of other insurance business.**—The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance, subject to the following adjustments.—

(*a*) subject to the other provisions of this rule, any expenditure or allowance which is not admissible under the provisions of sections 30 to 43 in computing the profits and gains of a business shall be added back;

(*b*) any amount either written off or reserved in the accounts to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts on account of appreciation of or gains on the realisation of investments shall be treated as part of the profits and gains:

Provided that the Income-tax Officer is satisfied about the reasonableness of the amount written off or reserved in the accounts, as the case may be, to meet depreciation of or loss on the realisation of investments.

(*c*) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction

C.—Other provisions

6. **Profits and gains of non-resident person.**—(1) The profits and gains of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.

(2) For the purposes of this rule, the world income in relation to life insurance business of a person not resident in India shall be computed in the manner laid down in this Act for the computation of the profits and gains of life insurance business carried on in India.

7. **Interpretation.**—(1) For the purposes of these rules—

(*i*) "gross external incomings" means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund), and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of investments:

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of section 44 would have been assessable under the head "Income from house property", shall be computed in the manner applicable to income chargeable under that head, and that there shall be allowed from such gross incomings such deductions as are permissible in respect of income chargeable under that head;

(*ii*) "investments" includes securities, stocks and shares;

(*iii*) "management expenses" means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance, in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of investments, and any expenditure or allowance other than expenditure or allowance which may under the provisions of sections 30 to 43 be allowed for in computing the profits and gains of a business, are not management expenses for the purposes of these rules;

(*iv*) "life insurance business" means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*v*) "rule" means a rule contained in this Schedule.

(2) References in these rules to the Insurance Act, 1938 (4 of 1938), or any provision thereof, shall, in relation to the Life Insurance Corporation of India, be construed as references to that Act or provision as read with section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956)

THE SECOND SCHEDULE

PROCEDURE FOR RECOVERY OF TAX

(*See section* 222)

PART I

General provisions

1. **Definitions.**—In this Schedule, unless the context otherwise requires,—

(*a*) "certificate" means a certificate received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule;

(*b*) "defaulter" means the assessee mentioned in the certificate;

(*c*) "execution", in relation to a certificate, means recovery of arrears in pursuance of the certificate;

(*d*) "movable property" includes growing crops:

(*e*) "officer" means a person authorised to make an attachment or sale under this Schedule,

(*f*) "rule" means a rule contained in this Schedule, and

(*g*) "share in a Corporation" includes stock, debenture stock, debentures or bonds.

2. **Issue of notice.**—When a certificate has been received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

3. **When certificate may be executed.**—No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing an attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

4. **Mode of recovery.**—If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes:—

(*a*) by attachment and sale of the defaulter's movable property;

(*b*) by attachment and sale of the defaulter's immovable property;

(*c*) by arrest of the defaulter and his detention in prison;

(*d*) by appointing a receiver for the management of the defaulter's movable and immovable properties.

5. **Interest, costs and charges recoverable.**—There shall be recoverable, in the proceedings in execution of every certificate,—

(*a*) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of section 220; and

(*b*) all charges incurred in respect of—

(*i*) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(*ii*) all other proceedings taken for realising the arrears.

6. **Purchaser's title.**—(1) Where property is sold in execution of a certificate, there shall vest in the purchaser

merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

7. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.—(1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

8. Disposal of proceeds of execution.—(1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner:—

(*a*) there shall first be paid to the Income-tax Officer the costs incurred by him,

(*b*) there shall, in the next place, be paid to the Income tax Officer the amount due under the certificate in execution of which the assets were realized;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the Income-tax Officer therefrom any other amount recoverable under the procedure provided by this Act, which may be due upon the date upon which the assets were realised; and

(*d*) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (*c*) shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the Income-tax Officer to receive any amount referred to in clause (*c*), the Tax Recovery Officer shall determine the dispute.

9. General bar to jurisdiction of civil courts, save where fraud alleged.—Except as otherwise expressly provided in this Act, every question arising between the Income-tax Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises:

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

10. Property exempt from attachment.—(1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908) exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

11. Investigation by Tax Recovery Officer.—(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

(*a*) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(*b*) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, if it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

12. Removal of attachment on satisfaction or cancellation of certificate.—Where—

(*a*) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or

(*b*) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

13. Officer entitled to attach and sell.—The attachment and sale of movable property and the attachment and sale of immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct

14. Defaulting purchaser answerable for loss on resale.—Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the Income-tax Officer or the defaulter be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

15. Adjournment or stoppage of sale.—(1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

16. Private alienation to be void in certain cases.—(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property

attached or of any interest therein and any payment to the defaulter of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

17. Prohibition against bidding or purchase by Officer. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold

18. Prohibition against sale on holidays.—No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

19. Assistance by police.—Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

PART II

Attachment and sale of movable property

Attachment

20. Warrant.—Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised.

21. Service of copy of warrant.—The officer shall cause a copy of the warrant to be served on the defaulter.

22. Attachment.—If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

23. Property in defaulters' possession.—Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

24. Agricultural produce.—Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

(*a*) where such produce is growing crop,—on the land on which such crop has grown, or

(*b*) where such produce has been cut or gathered,—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

25. Provisions as to agricultural produce under attachment.—(1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and the Income-tax Officer shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

26. Debts and shares, etc.—(1) In the case of—

(*a*) a debt not secured by a negotiable instrument,

(*b*) a share in a corporation, or

(*c*) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting—

(*i*) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;

(*ii*) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(*iii*) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (*i*) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

27. Attachment of decree.—(1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

(*i*) the Tax Recovery Officer cancels the notice, or

(*ii*) the Income-tax Officer or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (*ii*) of sub-rule (1), it shall, on the application of the Income-tax Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The Income-tax Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. Share in movable property.—Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging in it any way.

29. Salary of Government servants.—Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary.

30. Attachment of negotiable instrument.—Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument

shall be brought before the Tax Recovery Officer and held subject to his orders.

31. Attachment of property in custody of court or public officer. - Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Income-tax Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

32. Attachment of partnership property.—(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or, on the case of a sale being directed, to purchase the same.

33. Inventory.—In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

34. Attachment not to be excessive.—The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

35. Seizure between sun-rise and sun-set.—Attachment by seizure shall be made after sun-rise and before sun-set and not otherwise.

36. Power to break, open doors etc.—The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

Sale

37. Sale.—The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

38. Issue of proclamation.—When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

39. Proclamation how made.—(1) Such proclamation shall be made by beat of drum or other customary mode,—

(*a*) in the case of property attached by actual seizure—

(*i*) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and

(*ii*) at such other places as the Tax Recovery Officer may direct;

(*b*) in the case of property attached otherwise than by actual seizure in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

40. Sale after fifteen days.—Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale-proclamation was affixed in the office of the Tax Recovery Officer.

41. Sale of agricultural produce.—(1) Where the property to be sold is agricultural produce, the sale shall be held,—

(*a*) if such produce is a growing crop—on or near the land on which such crop has grown, or

(*b*) if such produce has been cut or gathered—at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale—

(*a*) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(*b*) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed whatever price may be offered for the produce.

42. Special provisions relating to growing crops.—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (*e.g.*, as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

43. Sale to be by auction.—The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

44. Sale by public auction.—(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

45. Irregularity not to vitiate sale, but any person injured may sue.—No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

46. Negotiable instruments and shares in a corporation.—Notwithstanding anything contained in this Schedule, where the porperty to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

47. Order for payment of coin or currency notes to the Income-tax Officer.—Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof

sufficient to satisfy the certificate, be paid over to the Income-tax Officer

PART III

Attachment and sale of immovable property

Attachment

48. Attachment.—Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

49. Service of notice of attachment.—A copy of the order of attachment shall be served on the defaulter.

50. Proclamation of attachment.—The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

51. Attachment to relate back from the date of service of notice.—Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter

Sale

52. Sale and proclamation of sale.—(1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

53. Contents of proclamation.—A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

(*a*) the property to be sold;

(*b*) the revenue, if any, assessed upon the property or any part thereof;

(*c*) the amount for the recovery of which the sale is ordered; and

(*d*) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

54. Mode of making proclamation.—(1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both: and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

55. Time of sale.—No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

56. Sale to be by auction.—The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

57. Deposit by purchaser and re-sale in default.—(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property

58. Procedure in default of payment.—In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

59. Authority to bid.—All persons bidding at the sale shall be required to declare if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

60. Application to set aside sale of immovable property on deposit.—(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—

(*a*) for payment to the Income-tax Officer, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of six per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(*b*) for payment to the purchaser, as penalty a sum equal to five per cent of the purchase-money but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.—Where immovable property has been sold in execution of a certificate, the Income-tax Officer, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale.

Provided that—

(*a*) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(*b*) an application made by defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable form him in execution of the certificate.

62. Setting aside sale where defaulter has no saleable interest.—At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

63. Confirmation of sale.—(1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase-money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

64. Return of purchase money in certain cases.—Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

65. Sale certificate.—(1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

66. Postponement of sale to enable defaulter to raise amount due under certificate.—(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

67. Fresh proclamation before re-sale.—Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before provided for the sale.

68. Bid of co-share to have preference.—Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

PART IV

Appointment of receiver

69. Appointment of receiver for business.—(1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

70. Appointment of receiver for immovable property. Where immovable property is attached the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

71. Powers of receiver.—(1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any shall be paid to the defaulter.

72. Withdrawal of management.—The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

Arrest and detention of the defaulter

73. Notice to show cause.—(1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer for reasons recorded in writing, is satisfied—

(*a*) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or

(*b*) that the defaulter has, or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1) a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

74. Hearing.—When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, the Tax Recovery Officer shall proceed to hear the Income-tax Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

75 Custody pending hearing.—Pending the conclusion of the inquiry the Tax Recovery Officer may, in his discretion order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

76. Order of detention.—(1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.

77. Detention in and release from prison.—(1) Every person detained in the civil prison in execution of a certificate may be so detained,—

(*a*) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees—for a period of six months, and

(*b*) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

(*i*) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

(*ii*) on the request of the Income-tax Officer who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules

78 and 79.

Provided that where he is to be released on the request of the Income-tax Officer, he shall not so be released without the order of the Tax Recovery Officer.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

78. Release.—(1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

79. Release on ground of illness.—(1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

80. Entry into dwelling house.—For the purpose of making an arrest under this Schedule–

(*a*) no dwelling house shall be entered after sun-set and before sun-rise;

(*b*) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

(*c*) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

81. Prohibition against arrest of women or minors etc.—The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

(*a*) a woman, or

(*b*) any person who, in his opinion, is a minor or of unsound mind

Part VI

Miscellaneous

82. Officers deemed to be acting judicially.—Every Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officer's Protection Act, 1850 (18 of 1850).

83. Power to take evidence.—Every Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the productipn of documents.

84. Continuance of certificate.—No certificate shall cease to be in force by reason of the death of the defaulter.

85. Procedure on death of defaulter.—If at any time after the issue of the certificate by the Income-tax Officer to the Tax Recovery Officer the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter

86. Appeals.—(1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the revenue authority to which appeals ordinarily lie against the orders of a Collector under the law relating to land revenue of the State concerned.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise

87. Review.—Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

88. Recovery from surety.—Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

89. Penalties.—Whoever fraudulently removes conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code (45 of 1860)

90. Subsistence allowance.—(1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the Income-tax Officer.

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

91. Forms.—The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

92. Power to make rules.—(1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely:—

(*a*) the area within which Tax Recovery Officers may exercise jurisdiction;

(*b*) the manner in which any property sold under this Schedule may be delivered;

(*c*) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;

(*d*) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;

(*e*) the fees to be charged for any process issued under this Schedule;

(*f*) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;

(*g*) recovery of poundage fee;

(*h*) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale,

(*i*) the mode of attachment of business.

93. Saving regarding charge.—Nothing in this Schedule shall affect any provision of this Act whereunder

the tax is a first charge upon any asset.

THE THIRD SCHEDULE

PROCEDURE FOR DISTRAINT BY INCOME-TAX OFFICER

[*See section* 226 (5)]

Distraint and sale.—Where any distraint and sale of movable property are to be effected by any Income-tax Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale

THE FOURTH SCHEDULE

PART A

Recognised provident funds

[*See sections* 2 (38), 10 (12), 10 (25), 36 (1) (*iv*), 87 (1) (*d*), 111, 192 (4)]

1. Application of Part.—This Part shall not apply to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies.

2. Definitions.—In this Part, unless the context otherwise requires,—

(*a*) "employer" means any person who maintains a provident fund for the benefit of his or its employees, being—

(*i*) a Hindu undivided family, company, firm or other association of persons, or

(*ii*) an individual engaged in a business or profession the profits and gains where of are assessable to income-tax under the head "Profits and gains of business or profession";

(*b*) "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*c*) "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an emtployee, but does not include any sum credited as interest;

(*d*) "balance to the credit of an employee" means the total amount to the credit of his individual account in a provident fund at any time,

(*e*) "annual accretion" in relation to the balance to the credit of an employee, means the increase to such balance in any year, arising from contributions and interest;

(*f*) "accumulated balance due to an employee" means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund;

(*g*) "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund; and

(*h*) "salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

3. According and withdrawal of recognition.—(1) The Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Board may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the date on which it is made.

(4) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund

4. Conditions to be satisfied by recognised provident funds.—In order that a provident fund may receive and retain recognition, it shall, subject to the provisions of rule 5, satisfy the conditions set out below and any other conditions which the Board may, by rules, specify

(*a*) all employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India,

(*b*) the contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund;

(*c*) the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year;

(*d*) the fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable, save with the consent of all the beneficiaries,

(*e*) the fund shall consist of contributions as above specified, received by the trustees, of accumulations thereof, and of interest credited in respect of such contributions and accumulations, and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund, and of no other sums;

(*f*) the employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund:

Provided that in such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest credited in respect of such contributions in accordance with the regulations of the fund and the accumulations thereof;

(*g*) the accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund,

(*h*) save as provided in clause (*g*) or in accordance with such conditions and restrictions as the Board may, by rules, specify, no portion of the balance to the credit of an employee shall be payable to him.

5. Relaxation of conditions.—(1) Notwithstanding anything contained in clause (*a*) of rule 4 the Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in India, provided the proportion of employees employed outside India does not exceed ten per cent.

(2) Notwithstanding anything contained in clause (*b*) of rule 4, an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to serve the employer.

(3) Notwithstanding anything contained in clause (*e*) or clause (*g*) of rule 4,—

(*a*) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain the whole or any part of the accumulated balance due to the employee to be drawn by him at any time on demand;

(*b*) where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accordance with the preceding clause, the fund

may consist also of interest in respect of such accumulated balance.

(4) Subject to any rules which the Board may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of clause (*c*) of rule 4,—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salaries do not in each case exceed five hundred rupees per mensem, and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

(5) Notwithstanding anything contained in clause (*b*) of rule 4, in order to enable an employee to pay the amount of tax assessed on his total income as determined under sub-rule (4) of rule 11, he shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in sub-rule (2) of rule 11 had not been included in his total income.

6. **Employer's annual contributions, when deemed to be income received by employee.**—That portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—

(*a*) contributions made by the employer in excess of ten per cent of the salary of the employee, and

(*b*) interest credited on the balance to the credit of the employee in so far as it exceeds one-third of the salary of the employee or is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification in the Official Gazette, shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax and super-tax.

7. **Exemption of employee's contributions.**—An employee participating in a recognised provident fund shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on his own contributions to his individual account in the fund in the previous year, in so far as the aggregate of such contributions does not exceed one-fifth of his salary in that previous year or eight thousand rupees, whichever is less.

8. **Exclusion from total income of accumulated balance.**—The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—

(*i*) if he has rendered continuous service with his employer for a period of five years or more, or

(*ii*) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee.

9. **Tax on accumulated balance.**—(1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income owing to the provisions of rule 8 not being applicable, the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the previous year in which the accumulated balance due to him becomes payable.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 becomes payable, an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58-E of the Indian Income-tax Act, 1922 (11 of 1922) for any assessment year up to and including the assessment year 1932-1933, if the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933) had come into force on the 15th day of March, 1930, shall be payable by the employee in addition to any other tax payable by him for the previous year in which such balance becomes payable.

10. **Deduction at source of tax payable on accumulated balance.**—The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 applies, at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under that rule and all the provisions of Chapter XVII-B shall apply as if the accumulated balance were income chargeable under the head "Salaries".

11. **Treatment of balance in newly recognised provident fund.**—(1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-rule (4) of this rule and sub-rule (5) of rule 5 shall apply thereto.

(3) Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act, other than this Part.

(4) Subject to such rules as the Board may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Part had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employee in the previous year in which the recognition of the fund takes effect and shall be included in the employee's total income for that previous year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance.

Provided that, in cases of serious accounting difficulty, the Commissioner may, subject to the said rules, make a summary calculation of such aggregate.

(5) Nothing in this rule shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee before recognition is accorded, in any manner which may be lawful.

12. **Accounts of recognised provident funds.**—(1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars, as the Board may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Board may prescribe.

13. **Appeals.**—(1) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as the Board may prescribe.

14. **Treatment of fund transferred by employer to**

trustee.—(1) Where an employer, who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustees (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of section 37, incurred in the previous year in which he accumulated balance due to the employee is paid.

15. Provisions relating to rules.—(1) In addition to any power conferred by this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for recognition;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purposes of this Part and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

PART B

Approved superannuation funds

[*See sections* 2 (6), 10 (13), 10 (25) (*iii*), 36 (1) (*iv*), 87 (1) (*e*), 192 (5), 206 (2)]

1. Definitions.—In this Part, unless the context otherwise requires, "employer", "employee", "contribution" and "salary" have, in relation to superannuation funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

2. Approval and withdrawal of approval.—(1) The Commissioner may accord approval to any superannuation fund or any part of a superannuation fund which, in his opinion, complies with the requirements of rule 3, and may at any time withdraw such approval, if in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

3. Conditions for approval.—In order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India;

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons;

(*c*) the employer in the trade or undertaking shall be a contributor to the fund; and

(*d*) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

4. Application for approval.—(1) An application for approval of a superannuation fund or part of a superannuation fund shall be made in writing by the trustees of the fund to the Income-tax Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up, but the Commissioner may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer mentioned in sub-rule (1), and in default of such communication any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

5. Contributions by employer, when deemed to be income of employer.—Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purpose of income-tax and super-tax to be the income of the employer of the previous year in which it is so repaid.

6. Deduction of tax on contributions paid to an employee.—Where any contributions made by an employer, including interest on contributions, if any, are paid to an employee during his life-time, income-tax and super-tax on the amounts so paid shall be deducted at the average rate of income-tax and super-tax at which the employee was liable to income-tax and super-tax during the preceding three years or during the period, if less than three years, when he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Board may direct.

7. Deduction from pay of and contributions on behalf of employee to be included in return.—Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under sub-section (1) of section 206.

8. Appeals.—(1) An employer objecting to an order of the Commissioner refusing to accord approval to a superannuation fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

9. Liability of trustees on cessation of approval.—If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to tax on any sum paid on account of returned contributions (including interest on contributions, if any), in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved superannuation fund under the provisions of this Part.

10. Particulars to be furnished in respect of superannuation funds.—The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the Income-tax Officer may require.

11. Provision relating to rules.—(1) In addition to

any power conferred by this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for approval;

(*b*) prescribing the returns, statements, particulars, or information which the Income-tax Officer may require, from the trustees of an approved superannuation fund or from the employer;

(*c*) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer;

(*d*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund;

(*e*) determining the extent to, and the manner in, which exemption from payment of income-tax and super-tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn;

(*f*) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder; and

(*g*) generally, to carry out the purposes of this Part and to secure such further control over the approval of superannuation funds and the administration of approved superannuation funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

PART C

Approved gratuity funds

[*See sections* 2 (5), 17 (1) (*iii*), 36 (1) (*v*)]

1. Definitions.—In this Part, unless the context otherwise requires, "employer", "employee", "contribution" and "salary" have, in relation to gratuity funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

2. Approval and withdrawal of approval.—(1) The Commissioner may accord approval to any gratuity fund which, in his opinion, complies with the requirements of rule 3 and may at any time withdraw such approval if, in his opinion, the circumstances of the fund cease to warrant the continuance of the approval.

(2) The Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any gratuity fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

3. Conditions for approval.—In order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

(*a*) the fund shall be a fund established under an irrevocable trust, in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India;

(*b*) the fund shall have for its sole purpose the provision of a gratuity to employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund or to the widows, children or dependents of such employees on their death;

(*c*) the employer in the trade or undertaking shall be a contributor to the fund; and

(*d*) all benefits granted by the fund shall be payable only in India.

4. Application for approval.—(1) An application for approval of a gratuity fund shall be made in writing by the trustees of the fund to the Income-tax Officer by whom the employer is assessable and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last three years for which such accounts have been made up, but the Commissioner may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alterations to the Income-tax Officer mentioned in sub-rule (1), and in default of such communication, any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

5. Gratuity deemed to be salary.—Where any gratuity is paid to an employee during his life-time the gratuity shall be treated as salary paid to the employee for the purposes of this Act.

6. Liability of trustees on cessation of approval.—If a gratuity fund for any reason ceases to be an approved gratuity fund, the trustees of the fund shall nevertheless remain liable to tax on any gratuity paid to any employee.

7. Contributions by employer, when deemed be income of employer.—Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purposes of income-tax and super-tax to be the income of the employer of the previous year in which they are so repaid.

8. Appeals.—(1) An employer objecting to an order of the Commissioner refusing to accord approval to a gratuity fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

9. Provisions relating to rules.—(1) In addition to any power conferred in this part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for approval;

(*b*) limiting the ordinary annual and other contributions of an employer to the fund;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or the creation of a charge upon, his beneficial interest in an approved gratuity fund;

(*d*) providing for the withdrawal of the approval in the case of a fund which ceases to satisfy the requirements of this Part or the rules made thereunder; and

(*e*) generally, to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and the administration of gratuity funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

THE FIFTH SCHEDULE

Exemption from Super-tax in respect of certain dividends

[*See section* 99 (1) (*iv*)]

1. Super-tax shall not be payable by a company in respect of any dividend which is assessable for the assessment year commencing on the 1st day of April, 1962, and for the subsequent assessment years, and which is declared—

(*a*) by an Indian company formed and registered after the 31st day of March, 1952, and before the 1st day of April, 1967, where—

(1) the Central Government is satisfied that the Indian company is wholly or mainly engaged in an industry for the manufacture or production of any one or more of the articles specified in any of the items in Part A of this Schedule; and

(2) the income of the Indian company would have been exempt under the provisions of section 84, if the provisions of that section had been applicable thereto; or

(*b*) by an Indian company formed and registered after the 31st day of March, 1961, and before the 1st day of April, 1967, where—

(1) the Central Government is satisfied that the Indian company is wholly or mainly engaged in an

industry for the manufacture or production of any one or more of the articles specified in any of the items in Part B of this Schedule; and

(2) the income of the Indian company would have been exempt under the provisions of section 84, if the provisions of that section had been applicable thereto.

2. Super-tax shall not be payable by a company in respect of any dividend which is assessable for the assessment year commencing on the 1st day of April, 1962, and for the subsequent assessment years and which is payable to it in respect of any fresh capital raised by an Indian company by public subscription—

(*a*) after the 28th day of February, 1953, and before the 1st day of April, 1967, for the purpose of increasing the production of, or starting a separate unit for the manufacture or production of, any one or more of the articles specified in any of the items in Part A of this Schedule; and

(*b*) after the 31st day of March, 1961 and before the 1st day of April, 1967, for the purpose of increasing the production of, or starting a separate unit for the manufacture or production of any one or more of the articles specified in any of the items in Part B of this Schedule.

3. Where by any Act any of the items in Part A or Part B of this Schedule is repealed, then, notwithstanding such repeal, any exemption conferred by rule 1 or rule 2 shall continue to be available for the dividends declared by any Indian company engaged in any industry referred to in the item so repealed—

(*i*) in the cases referred to in rule 1, so long as such dividends relate to the previous year in which the Indian company is incorporated and the nine previous years immediately succeeding;

(*ii*) in the cases referred to in rule 2, so long as such dividends relate to the previous year in which the fresh capital was raised and the nine previous years immediately succeeding; and

(*iii*) in the case of an Indian company which is wholly or mainly engaged in, or, as the case may be, which runs a separate unit for the manufacture or production of articles specified in any item so repealed and also in any item which continues to be in force, the exemption from super-tax referred to in rule 1 or rule 2 in respect of such part of the dividends declared by the Indian company in respect of any previous year later than the nine previous years referred to in clause (*i*) or clause (*ii*) as is attributable to the profits and gains derived from the manufacture or production of any article specified in the item so repealed shall lapse.

PART A

1. Coal including coke and other derivatives;
2. Iron and Steel (metal), ferro-alloys and special steels;
3. Motor and aviation fuel, kerosene, crude oils and synthetic oils (not being oil exploration);
4. Chemicals (other than fertilisers) of the folllowing types:
   (*a*) Inorganic heavy chemicals;
   (*b*) Organic heavy chemicals;
   (*c*) Fine chemicals (including photographic chemicals);
   (*d*) Synthetic rubber;
   (*e*) Man-made fibres, other than viscose rayon;
   (*f*) Coke oven by-products;
   (*g*) Coal-tar distillation products like napthalene, anthracene and the like;
   (*h*) Explosives, including gun-powder and safety fuses;
5. Inorganic, organic and mixed fertilisers;
6. Industrial machinery of the following types (including gear wheels and parts thereof, boilers and steam generating plants):—

A. Major items of specialised equipment used in specific industries:

   (*i*) Textile machinery (such as frames, carding machines, powerlooms and the like) including textile accessories;
   (*ii*) Jute machinery;
   (*iii*) Rayon machinery;
   (*iv*) Sugar machinery;
   (*v*) Tea machinery;
   (*vi*) Mining machinery;
   (*vii*) Metallurgical machinery;
   (*viii*) Cement machinery;
   (*ix*) Chemical machinery;
   (*x*) Pharmaceuticals machinery;
   (*xi*) Paper machinery;

B. General items of machinery used in several industries, such as the equipment required for various 'unit processes':

   (*i*) Size reduction equipment—crushers, ball mills and the like;
   (*ii*) Conveying equipment—bucket elevators, skip hoists, cranes, derricks and the like;
   (*iii*) Size separation units—screens, classifiers and the like;
   (*iv*) Mixers and reactors—kneading mills, trubo mixers and the like;
   (*v*) Filtration equipment—filter presses, rotary filters and the like;
   (*vi*) Centrifugal machines;
   (*vii*) Evaporators;
   (*viii*) Distillation equipment;
   (*ix*) Crystallisers;
   (*x*) Driers;
   (*xi*) Power-driven pumps—reciprocating, centrifugal and the like;
   (*xii*) Air and gas compressors and vacuum pipes (excluding electrical furnaces);
   (*xiii*) Refrigeration plants for industrial use;
   (*xiv*) Fire fighting equipment and appliances including fire engines;

C. Other items of industrial Machinery:

   (*i*) Ball, roller and tapered bearings;
   (*ii*) Speed reduction units;
   (*iii*) Grinding wheels and abrasives.

7. Machinery and equipment for the generation, transmission and distribution of electric energy;
8. Non-ferrous metals including alloys;
9. Paper including newsprint and paper board;
10. Internal combustion engines;
11. Power-driven pumps;
12. Automobiles;
13. Tractors;
14. Cement;
15. Electric Motors;
16. Locomotives;
17. Rolling Stock;
18. Machine Tools;
19. Agriculture Implements;
20. Ferro-manganese;
21. Dye-stuffs;
22. Refractories; and
23. Steel pipes and spun iron pipes.

PART B

1. Steel castings;
2. Steel forgings provided the undertaking is equipped with forges of two-ton hammer and above;
3. Pulp machinery;
4. Pulp for paper and artificial fibres;
5. Dies and jigs;
6. Precision tools;
7. *Industrial Instruments:*
   (*i*) Water meters, steam meters and electricity meters;
   (*ii*) Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights and levels.
8. Scientific Instruments;
9. Sealed compressor units for the refrigeration industry;
10. Earth-moving equipment;
11. Boilers;
12. Electrical Railway Signalling equipment;
13. Printing Machinery;
14. Organic intermediates for dyestuffs, drugs and plastics; and
15. Component parts of each of the articles mentioned in items numbers 6, 7, 10, 12 and 13 of Part A and items numbers 10 and 11 of Part B, that is to say, such parts as are essential for the working of the machinery referred to in the items aforesaid and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose and are in complete finished form and ready for fitment.

भाग 7—भारतीय निर्वाचन आयोग (Election Commission of India) का वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं

शून्य

भाग 8—हिमाचल प्रदेश क्षेत्रीय परिषद् द्वारा अधिसूचित आदेश इत्यादि

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